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ORDINANCE OF THE CITY COUNCIL
AUTHORIZING THE MAYOR, FINANCE DIRECTOR AND PURCHASING AGENT
TO EXECUTE A NET METERING FINANCING ARRANGEMENT WITH
SOUTHERN SKY RENEWABLE ENERGY RI - NATICK AVE - CRANSTON, LLC

No.

Passed:

Michael J Farina, Council President

Approved:

Allan Fung, Mayor

It is ordained by the City Council of the City of Cranston as follows:

WHEREAS, Rhode Island General Laws Chapter 39-26.4, as amended entitled "Net Metering" allow Rhode Island cities and towns to participate in net metering financing arrangements; and

WHEREAS, numerous municipalities and quasi-public agencies in Rhode Island have entered into net metering financing arrangements; and

WHEREAS, participating public entities can realize savings in their electric utility bills through the receipt of net metering credits from eligible net metering resources; and

WHEREAS, the taxpayers of the City of Cranston would substantially benefit by the municipality entering into a net metering finance arrangement; and

WHEREAS, Southern Sky Renewable Energy RI - Natick Ave - Cranston, LLC is developing eligible net metering system sites in the City of Cranston and State of Rhode Island; and

WHEREAS, the net metering credits for such developments would be a direct benefit to the taxpayers and residents of Cranston; and

WHEREAS, the administration and city council have determined that the long term benefits and savings to the City of Cranston by entering into a net metering finance arrangement is a sound financial and business practice.

NET METERING FINANCING ARRANGEMENT

This Net Metering Financing Arrangement (this "*Agreement*") made and entered into as of [], 2019, (the "*Effective Date*") by and between **Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC**, a Rhode Island limited liability company, for itself and any and all assignees permitted hereunder ("*Seller*"), and the City of Cranston, a municipal corporation with a principal place of business located at 869 Park Avenue, Cranston, Rhode Island ("*City*"). Seller and the City may be referred to herein collectively as the "*Parties*," and individually as a "*Party*."

RECITALS

A. Seller is in the business of developing renewable energy generation facilities and Seller is in the process of developing and intends to commence construction of, one or more solar renewable energy generation facilities at the locations described in Exhibit A or at such other location that Seller may designate in its sole discretion (collectively, the "*Property*"), which facility(ies) is(are) anticipated to produce the net metering capacity output set forth in Exhibit C (collectively, the "*Facility*").

B. Upon achieving Commercial Operation (as defined below), the Facility will be capable of remote net metering in order to partially offset the cost of electricity incurred by the City and other eligible City counterparties.

C. The Parties intend that, pursuant to the Net Metering Rules (as defined below), the Facility will be comprised of an Eligible Net-Metering System (as defined in the Net Metering Rules) developed pursuant to a Net Metering Financing Arrangement (as defined below) and will generate Renewable Net Metering Credits (as defined below) that shall be utilized to offset existing City and other eligible City counterparties electrical accounts.

D. Subject to the terms and conditions of this Agreement, Seller desires to sell and deliver to City, and City desires to purchase and accept delivery from Seller, all or a portion of the Renewable Net Metering Credits generated by the Facility (but not the Environmental Attributes or the Tax Attributes) to be net metered to City's accounts during the Term, so that City, as Net Metering Customer, receives such Renewable Net Metering Credits generated by the Facility and will allocate Renewable Net Metering Credits for use in partially offsetting the utility bills associated with the City and other eligible City counterparties' electrical accounts.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration the sufficiency and receipt of which are acknowledged by the Parties, and intending to be legally bound hereby, each Party hereby agrees as follows:

ARTICLE 1 DEFINED TERMS

As used in this Agreement, the following terms, when used in this Agreement and initially capitalized, shall have the following meanings:

"Adjusted Designed Output" shall have the meaning set forth on Exhibit C.

"Affiliate" means, with respect to any Person, such Person's general partner or manager, or any

other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

"Agreement" means this Net Metering Financing Arrangement, including all exhibits and attachments hereto.

"Applicable Legal Requirements" means any law, act, rule, regulation, requirement, standard, order by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, and other governmental approvals and consents, which are applicable to the Facility, Property, Electricity, Renewable Net Metering Credits, and a Party's rights and obligations hereunder, including, without limitation, the financing, construction, operation, maintenance, and ownership of the Facility, as well as the selling and purchasing of electricity, and the accrual of associated Renewable Net Metering Credits therefrom.

"Bankrupt" means, with respect to a Party: (i) a Party against which a bankruptcy, receivership or other insolvency proceeding is instituted and not dismissed, stayed or vacated within sixty (60) days thereafter; or (ii) a Party that has made a general assignment for the benefit of creditors, become insolvent, or has voluntarily instituted bankruptcy, reorganization, liquidation or receivership proceedings.

"Billing Cycle" means the monthly billing cycle established by the LDC.

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

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

"City Allocation Percentage" has the meaning set forth in Exhibit C of this Agreement.

"City Default" has the meaning set forth in Section 9.1(B)(a).

"Commercial Operation," with respect to a Facility, means that the Facility (i) is ready for regular, daily operation as determined by Seller in good faith, (ii) has been interconnected to the LDC system as identified from the LDC's Authorization to Interconnect email and in accordance with the requirements of the applicable interconnection service agreement(s) and the Net Metering Rules, (iii) has been accepted by the LDC (to the extent required), (iv) is capable of producing Electricity at full or substantially full capacity, (v) has been installed in accordance with Applicable Legal Requirements, and (vi) qualifies as a Net Metering Facility under the Net Metering Rules.

"Commercial Operation Date" means the first day on which the Facility has achieved Commercial Operation and Seller has delivered notice of the same to City pursuant to Section 3.2.

"Construction Commencement Date" means the date Seller obtains all necessary approvals and permits to commence construction (including sitework) on the Property in connection with the installation of the Facility or on any other date as agreed to or extended by the Parties.

"Contract Year" means a 365-day period commencing on the Commercial Operation Date and each anniversary thereafter.

"Defaulting Party" has the meaning set forth in Article 9.

"Delivered Quantity" has the meaning set forth in Section 4.3.

"Delivery Point" for the Facility means the LDC Metering Device.

"Designated Third Party" has the meaning set forth in Section 15.2(a).

"Early Termination Date" has the meaning set forth in Section 2.3.

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

"Electricity" means the actual and verifiable amount of electricity generated by the Facility and delivered to the LDC at the Seller Metering Device in whole kilowatt-hours (kWh), and that conforms to Applicable Legal Requirements and the applicable LDC and authoritative regulatory body standards.

"Environmental Attributes" means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Facility and/or its electricity generation, (ii) government financial incentives, (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iv) renewable energy certificates or any similar certificates or credits under the laws of the State of Rhode Island or any other jurisdiction, and (v) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the Facility and/or its electricity generation.

"Event of Default" has the meaning set forth in Article 9.

"Facility" has the meanings set forth in the recitals. For avoidance of doubt, except as otherwise expressly provided herein, the term "Facility" as used in this Agreement shall correspond with the term "Generation Unit" as defined in R.I. Gen. Laws §39-26-2 and as used in the Net Metering Rules. In the event the Seller designates additional renewable energy generation facilities to generate Renewable Net Metering Credits for purchase by the City and requires that a Site Specific Agreement (as defined in Section 18.11(e) below) be entered into between Seller or Seller's Affiliate and the City pursuant to Section 18.11(e) below (as opposed to such facility(ies) being automatically incorporated into the definition of Facility as set forth in the recitals and in Exhibit B attached hereto), then such Separate Facility(ies) (as such term is defined in Section 18.11(e) below), together with the Facility, shall be referred to herein as the "***Facilities***".

"Facility Targeted Electricity Offset" means the total amount of the City's annual energy consumption, expressed in kWhs, that the Seller has designated for the City to be offset through the purchase of Renewable Net Metering Credits from the Facility. The City's Facility Targeted Electricity Offset is set forth in Exhibit C, and may be modified by Seller at any time, and from time to time, in its sole discretion, in connection with the reallocation of the City's Total Targeted Electricity Offset by and among the Facility, the facility(ies) comprising the Facility, and any other Facilities designated by Seller, as applicable.

"Force Majeure" means any event or circumstance that prevents Seller or City from performing its

obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the negligence, of Seller, and (ii) by the exercise of reasonable due diligence, Seller or City is unable to overcome or avoid or cause to be avoided. Subject to the foregoing, Force Majeure may include but is not limited to the following acts or events: natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; explosions or fires arising from lightning or other causes unrelated to the acts or omissions of Seller; acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; strikes or labor disputes; and acts, failures to act or orders of any kind of any Governmental Authorities acting in their regulatory or judicial capacity.

"Governmental Authority" means the United States of America, the State of Rhode Island, and any political or municipal subdivision thereof (not including City), and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, leases, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, LDC, or other similar entity, on or with respect to the Net Metering Credits or this Agreement.

"Ground Lease" has the meaning set forth in Section 2.2(f).

"Guaranteed Output" has the meaning set forth in Section 4.9(a).

"Headings" the headings of Articles and Sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such Articles or Sections.

"Interconnection Obligations" shall have the meaning set forth in Section 3.3.

"Interest Rate" means the lesser of (a) one percent (1%) per month and (b) the maximum rate permitted by applicable law.

"Invoice" shall have the meaning set forth in Section 4.3.

"kWh" means kilowatt-hour.

"Laws" 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.

"LDC" means National Grid USA or its successor local distribution company.

"LDC Metering Device" means, with respect to the Facility, the LDC meter furnished and installed by the LDC for the purpose of measuring the Electricity delivered by the LDC to the Net Metering Customer and delivered by the Net Metering Customer to the LDC.

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

"Lender" means the entity or persons(s) providing financing to or for the benefit of Seller in connection with the Facility and/or the entity acting as collateral agent in respect of such financing.

"Net Metering Financing Arrangement" shall have the meaning set forth in the Net Metering Rules.

"Net Metering" shall have the meaning set forth in the Net Metering Rules.

"Net Metering Credit Rate" with respect to a particular Billing Cycle, means the average dollar per kWh value of a Renewable Net Metering Credit accruable to the Net Metering Customer of the Facility for that Billing Cycle.

"Net Metering Credit Value" with respect to a particular Billing Cycle, means the dollar value of a Renewable Net Metering Credit accruable to the Net Metering Customer of the Facility for that Billing Cycle.

"Net Metering Customer" shall have the meaning given this term in the Net Metering Rules. The Net Metering Customer under this Agreement is the City.

"Net Metering Facility" shall have the meaning set forth in the Net Metering Rules.

"Net Metering Rules" means, collectively and as amended from time to time, the Rhode Island net metering statute, R.I. Gen. Laws §39-26.4 et seq., any rules or regulations relating to Net Metering adopted by the PUC, orders issued by PUC relating to Net Metering (and the appendices thereto) and the associated net metering tariff of the LDC.

"Outside Construction Commencement Date," means the date that is eighteen (18) months after the Effective Date, provided that such period of time shall be automatically extended for a period of time concurrent with the periods of time required for (i) the LDC's completion of any required LDC System upgrades or resolution of any other delays caused through no direct fault of Seller, by the LDC, including, without limitation, the LDC's failure to comply with its interconnection tariff ("LDC Delay"), (ii) the resolution of any challenge to any permit or approval relating to the Facility, and (iii) any weather related delays.

"Person" means an individual, general or limited partnership, corporation, municipal corporation (including but not limited to the City), business trust, Joint Stock Company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company (including but not limited to Seller), or any other entity of whatever nature.

"Property" shall have the meaning set forth in the Recitals of this Agreement.

"Prudent Industry Practices" means the practices, methods, acts, and standards of care, skill, safety and diligence commonly employed or engaged in by experienced and prudent professionals, acting with reasonable care, in the solar electric generation industry in the financing, permitting, design, construction, operation and maintenance of generating equipment similar in size and technology to the Facility, and that are compliant with Applicable Legal Requirements, taking into consideration appropriate

economic factors.

"PUC" means the State of Rhode Island Public Utilities Commission or its successors.

"Renewable Net Metering Credit" means the applicable monetary value of a kilowatt-hour of electricity, determined in accordance with the Net Metering Rules, generated by the Facility.

"Renewable Net Metering Credit Price" shall have the meaning set forth in Exhibit B.

"Seller" shall have the meaning set forth in the introductory paragraph of this Agreement.

"Seller Default" has the meaning set forth in Section 9.1(A)(a).

"Seller Metering Device" means, with respect to the Facility, any and all revenue Seller meters installed by Seller at or before the Delivery Point needed for the registration, recording, and transmission of information regarding the amount of Electricity generated by the Facility.

"Separate Facility" has the meaning set forth in Section 18.11(e).

"Site Specific Agreement" has the meaning set forth in Section 18.11(e).

"Target Buyer Accounts" shall have the meaning set forth in Section 7.3(a)(ii).

"Tax Attributes" shall mean the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation.)

"Term" shall have the meaning set forth in Section 2.1.

"Termination Date" means the earlier to occur of: (i) the last day of the Term; (ii) the Early Termination Date; (iii) the date of termination of this Agreement as the result of an Event of Default; (iv) the date of termination as the result of Force Majeure pursuant to Section 8.2; and (v) the date of termination for any other reason permitted by this Agreement.

"Total Targeted Electricity Offset" means the total amount of the City's annual energy consumption, expressed in kWhs, that the City has agreed to offset through the purchase of Renewable Net Metering Credits from Seller or its Affiliates, provided however that following the first year after the Commercial Operation Date the Total Targeted Electricity Offset may be lowered each year to not less than 0.50% of the Total Targeted Electricity Offset for the prior year. The City's Total Targeted Electricity Offset is set forth in Exhibit C.

ARTICLE 2 TERM; CONDITIONS PRECEDENT; EARLY TERMINATION

2.1 **Term.** The term of this Agreement (including any extensions, the "**Term**") shall commence

as of the Effective Date and, unless terminated earlier pursuant to the terms of this Agreement, shall remain in effect until the twentieth-fifth (25th) anniversary of the Commercial Operation Date. This Agreement shall be extended automatically for two (2) successive additional five (5) year terms unless City provides written notice of its intent to not so extend the Term to Seller ninety (90) days prior to the end of each additional five (5) year term.

2.2 Conditions Precedent. The commencement of the obligation of Seller to sell Renewable Energy Credits to City under the provisions of this Agreement is subject to the fulfillment of each of the following conditions precedent:

- (a) The Seller shall have obtained all permits and approvals required for the construction and operation of the Facility and shall have otherwise satisfied all other Applicable Legal Requirements;
- (b) The Seller shall have obtained, with respect to the Facility, project financing at such rates and on such terms and conditions reasonably acceptable to Seller. Seller shall use diligent efforts to obtain such financing;
- (c) Seller and the municipality where the Property is located shall have executed an agreement for the payment in lieu of taxes (or "PILOT") pursuant to Rhode Island General Laws §§ 44-3-21, 44-3-9, and/or 44-3-3, if applicable;
- (d) City, after having received such documents from Seller, shall deliver a copy of the executed documents required by RI-PUC (No. 2207) and LCD, including system eligibility requirements as defined in "Eligible Net Metering System";
- (e) the Facility shall have achieved Commercial Operation; and
- (f) Seller and the City (as co-tenants) shall have entered into one or more ground leases for the Property (which, to be clear, may include additional or substitute properties designated by Seller in accordance with the provisions set forth in Exhibit A) similar in the form attached hereto as Exhibit E (collectively, the "**Ground Lease**"). By execution of this Agreement the City agrees to enter into the Ground Lease.

Seller may, in its sole discretion, waive conditions 2.2 (b), (c), and/or (d) above.

2.3 Early Termination. This Agreement may be terminated prior to the expiration of the full Term (the "*Early Termination Date*"):

- (a) by Seller, at any time prior to the Commercial Operation Date, with prior written notice to City, in the event that any of the conditions precedent set forth in Section 2.2 have not been satisfied, provided that the lack of satisfaction of any such condition is not exclusively caused by Seller's failure to exercise commercially reasonable efforts and diligence;
- (b) by City upon thirty (30) days prior written notice to Seller in the event that the Construction Commencement Date has not occurred by the Outside Construction Commencement Date, provided that, City may not exercise its right to terminate under

this Section 2.3(b) after the earlier of (i) the Construction Commencement Date and (ii) the date on which closing of Seller's financing for construction of the Facility has occurred; or

- (c) by either Party in accordance with Section 8.2.

Upon early termination of this Agreement in accordance with this Section 2.3, each Party shall discharge by performance all obligations due to the other Party hereunder that arose up to the Early Termination Date and the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof. Following early termination of this Agreement, at the request of either Party the Parties shall, without unreasonable delay, enter into a further written agreement mutually releasing each other.

ARTICLE 3 **DEVELOPMENT OF PROJECT**

3.1 Development of Facility by Seller. Seller shall undertake all diligent and commercially reasonable, good faith efforts to obtain and maintain required permits and financing for the Facility. Using such efforts, Seller shall design, construct, maintain and operate the Facility in accordance with Applicable Legal Requirements, Prudent Industry Practices, and applicable manufacturers' warranties and instructions and in a manner such that the Facility qualifies as a Net Metering Facility and the relationship between the Parties continues to qualify as a Net Metering Financing Arrangement under the Net Metering Rules. Notwithstanding anything contained herein to the contrary, the Parties acknowledge and agree that Seller shall have the right at any time, and from time to time, without requiring the City's consent or approval, to modify the size, location, and/or number of renewable energy generation facilities that will comprise the Facility for the purposes of this Agreement. Seller may exercise such right by providing written notice to the City identifying such modifications to the Facility, including any changes required to the definition of "Property" set forth herein and the changes to the City's Facility Targeted Electricity Offset, if any, as a result.

3.2 Notice of Commercial Operation. Subject to the provisions of this Agreement, Seller shall provide written notice to City when the Facility has achieved Commercial Operation. Seller shall attach to said notice a copy of the Authorization to Interconnect email from the LDC.

3.3 Interconnection Requirements. Seller shall be responsible for all costs, fees, charges and obligations of every kind and nature required to connect the Facility to the LDC System, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("*Interconnection Obligations*"). In no event will City be responsible for any Interconnection Obligations.

3.4 Cooperation Regarding Authorizations. Seller will prepare, file and manage applications for all permits, approvals, registrations and other related matters with the LDC and any Governmental Authority, including the submission of applications described in this Agreement. The City agrees to reasonably cooperate with Seller in preparing such applications and securing such permits, approvals and registrations, including, without limitation, timely executing and delivering all documentation required of the City relating thereto.

3.5 Title. Except as otherwise set forth in this Agreement, as between the Parties all ownership of and title to personal property of the Facility and all Environmental Attributes and Tax Attributes shall be and remain with the Seller.

3.6 Site Security. Seller will follow industry standard security procedures, practices, and policies.

3.7 Safety Shutdowns. In addition to the right of Seller to shut down the Facility for maintenance in accordance with this Agreement, Seller must shutdown the Facility if Seller, in the exercise of reasonable judgment, believes site conditions or activities of persons on the Property, which are not under the control of Seller, whether or not under the control of City, may interfere with the safe operation of the Facility, or if required to shut down by any Governmental Authority or the LDC. Seller shall give City notice of a shutdown promptly upon becoming aware of the potential for such conditions or activities. Seller and City shall cooperate and coordinate their respective efforts to restore site conditions so as to not interfere with the safe operation of the Facility and to reduce, to the greatest extent practicable, the duration of the shutdown.

ARTICLE 4 **PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES**

4.1 Delivery of Renewable Net Metering Credits. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Seller shall make available to and sell to City on an annual basis the City Allocation Percentage of the Renewable Net Metering Credits produced by the Facility. City shall receive the City Allocation Percentage of Renewable Net Metering Credits from the LDC that shall be available under net metering pursuant to this Net Metering Financing Arrangement. To the extent different than the Target Buyer Accounts (as defined in Section 7.3(a)(ii) below), Seller shall provide City a schedule listing the utility meters covered by this Agreement (which shall be some or all of the meters listed in Exhibit C, or, if no such list is provided, then any City account eligible for Net Metering, including without limitation accounts servicing the municipal buildings, housing authority, and water district). Except as permitted under this Agreement, the Renewable Net Metering Credits purchased by City from Seller under this Agreement shall not be resold, assigned or otherwise transferred to any other person or entity.

4.1.1 One-Time Contribution Payment by Seller. Within Thirty (30) Business Days following the Effective Date, Seller shall remit a one-time cash contribution to the City in the amount of One Hundred Thousand Dollars (\$100,000) to be applied towards renovations of the Cranston High School West football sports complex and/or for such other purpose desired by the City in its sole discretion.

4.2 Price for Renewable Net Metering Credits. The price paid by City for the Renewable Net Metering Credits delivered pursuant to this Agreement shall be calculated and invoiced in accordance with Section 4.3 and Exhibit B.

4.3. Invoicing and Payment. Monthly, Seller shall provide City with an invoice (the "*Invoice*") reporting the Renewable Net Metering Credits net metered to City's accounts during the prior Billing Cycle (the "*Delivered Quantity*") and charging the City for payment of an amount equal to the Delivered Quantity multiplied by the Renewable Net Metering Credit Price. If Renewable Net Metering Credits are being net metered to the City's accounts from multiple Facilities, then Seller shall have the right, but not the obligation, to send an Invoice on behalf of Seller's Affiliate(s) including such credits. Said Invoices shall be sent to the address set forth in notice provisions in Article 17 below unless another individual is designated by the City in writing as the appropriate recipient of such Invoices. City will remit payment of the amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to both Parties) within twenty (20) days following City's receipt of each such Invoice. Any amounts not paid by the due date will be deemed late and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date but excluding the date the delinquent amount is paid in full. Notwithstanding anything contained herein to the contrary, in the event the City does not identify Target Buyer Accounts with a capacity adequate to consume the entire City Allocation Percentage of the Designed Output or Adjusted Designed Output, as the case may be, of the Facility, then the "*Delivered Quantity*" shall include the Renewable Net Metering Credits that would have been net metered to the City's accounts

had such Target Buyer Accounts been identified, and the amount invoiced to the City (and paid by the City) shall be based upon such adjusted Delivered Quantity.

4.4 Invoice Disputes. In the event of a good faith dispute regarding any Invoice, City shall pay the undisputed amount of such Invoice and shall seek to resolve the dispute in accordance with the dispute resolution procedures set forth in Article 13. Upon resolution of the dispute, any required refund or additional payment shall be made within twenty (20) days of such resolution along with interest accrued at the Interest Rate from and including the date of the original payment (with respect to a refund) or original due date (with respect to an additional payment). Any dispute by City with respect to an Invoice or an adjustment thereof is waived unless, within sixty (60) days after the Invoice is rendered or such adjustment is made, City notifies Seller in writing of such dispute and states in reasonable detail the basis for such dispute. Upon City's written inquiry with respect to an Invoice, Seller, within ten (10) business days of receipt of said inquiry, shall provide City with information necessary to permit City to replicate Seller's computation of the invoiced amount.

4.5 Governmental Charges. Seller shall pay all Governmental Charges. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Electricity or Renewable Net Metering Credits hereunder are to be exempted from or not subject to one or more Governmental Charges, either Party shall, promptly upon the other Party's request, provide the requesting Party all necessary documentation to evidence such exemption or exclusion.

4.6 Title and Risk of Loss of Electricity. Title to Electricity will pass from Seller to LDC at the applicable Delivery Point. As between Seller and City, risk of loss of the Electricity in excess of the Delivered Quantity shall at all times remain with Seller.

4.7 Records and Audits. Each Party will keep, for a period of not less than seven (7) years after the expiration or termination of this Agreement, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for all transactions hereunder. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records directly related to transactions hereunder during such other Party's normal business hours.

4.8 Municipal Budget. City shall, each year during the Term of this Agreement, appropriate sufficient funds, either generally or specifically, to meet its obligations hereunder.

4.9 Minimum Output Guarantee.

(a) Seller hereby guarantees that the average annual amount of kilowatt hours in any consecutive three year period following the Commercial Operation Date will be at least eighty percent (80.00%) of the City Allocation Percentage of the Designed Output or Adjusted Designed Output, as the case may be (the "**Guaranteed Output**").

(b) In the event that the City Allocation Percentage of the average annual Electricity produced at the Facility is less than the Guaranteed Output (the amount of such difference being the "Performance Difference"), and the Electricity produced by Seller and Seller's Affiliates across all Facilities is less than eighty (80%) percent of the Total Targeted Electricity Offset in any consecutive three-year period following the Commercial Operation Date, if applicable, then Seller shall pay to the City an amount equal to the

product of (i) the Performance Difference *multiplied by* (ii) the Rate Difference (defined below). Payment of such amount shall be made within thirty (30) days following receipt of written notice from the City of the amount due. “Rate Difference” means the greater of (x) an amount equal to the difference between (A) the Net Metering Credit Rate *minus* (B) the rate charged per kilowatt hour to the City by the LDC for the shortfall and (y) zero (0). Notwithstanding the foregoing, the City shall not have the right to terminate this Agreement (or pursue any other remedy, and Seller shall not be in default nor shall the same constitute an Event of Default) due to a failure to provide the Guaranteed Output, unless the City delivers to Seller, within the Timeframe (defined below), written notice that such requirement has not been satisfied. “Timeframe” means ninety (90) days after the end of the applicable annual period referred to in Section 4.9(a). To be clear, the word “annual” in Section 4.9(a) means the three hundred sixty-five (365) day period beginning either on the Commercial Operation Date or an anniversary of the Commercial Operation Date.

ARTICLE 5

TITLE TO ENVIRONMENTAL ATTRIBUTES, TAX ATTRIBUTES, AND CAPACITY

Other than the Renewable Net Metering Credits that accrue to City's account as Net Metering Customer under the Net Metering Rules, all Environmental Attributes, Tax Attributes, and any rights or credits relating to the Facility shall remain the property of Seller and may be used, sold, transferred, pledged, collaterally assigned, retired or otherwise disposed of by Seller in its sole discretion and for its sole benefit. Subject to Applicable Legal Requirements and the other terms of this Agreement, City shall, upon Seller's request, take such reasonable actions as are reasonably necessary from time to time in order for Seller to claim the benefits of all Environmental Attributes, Tax Attributes, and capacity rights or credits other than the Renewable Net Metering Credits. Seller shall not make any public statements inconsistent with the fact that City is not purchasing or otherwise entitled to any Environmental Attributes, Tax Attributes, or capacity rights or credits other than the Renewable Net Metering Credits.

ARTICLE 6

METERING DEVICES; LDC BILLING ADJUSTMENTS

6.1 Metering Equipment. The Parties acknowledge that Seller shall arrange and pay for the LDC to furnish and install the LDC Metering Device. On behalf of City as the LDC's customer of record, Seller shall be responsible for arranging compliance with, and paying for, any LDC customer requirements relating to LDC access to the LDC Metering Device. In addition, Seller shall install, own, operate, and maintain one or more Seller Metering Devices at Seller's sole cost and expense.

6.2 Meter Accuracy. City may at any time, with reasonable advance notice to Seller, exercise its rights as the LDC's customer of record to seek testing of the accuracy of the LDC Metering Device. In addition, on behalf of City as the LDC's customer of record, Seller may on its own initiative with reasonable advance notice to City, and shall upon the request of City, exercise City's LDC customer rights to arrange for testing of the accuracy of the LDC Metering Device. The Party requesting such testing shall pay all costs imposed by the LDC for any such testing.

6.3 Billing Adjustments. In the event of a discrepancy between the data generated by the LDC Metering Device and the quantity of Renewable Net Metering Credits reflected on City's invoices from the LDC, Seller shall, upon its own initiative or upon request of City and at Seller's cost and expense, exercise diligent and, commercially reasonable efforts to investigate and remedy the discrepancy in consultation with the LDC. In the event such investigation results in an increase in the Renewable Net Metering Credits credited to City by the LDC, City shall pay for those additional Renewable Net Metering Credits at the

Renewable Net Metering Credit Price then in effect without interest, and in the event of a decrease in the quantity of Renewable Net Metering Credits credited to City by the LDC, Seller shall provide a credit on City's next invoice for the excess Renewable Net Metering Credits paid for by City but for which Renewable Net Metering Credits were not credited to City by the LDC.

ARTICLE 7 **REPRESENTATIONS AND WARRANTIES; CITY ACKNOWLEDGEMENT**

7.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action (including, without limitation, as to City, obtaining any and all applicable internal municipal approvals and authorizations) and do not violate any of the terms and conditions in its governing documents, any other contracts to which it is a party, or any applicable Laws;

(b) this Agreement constitutes a legally valid and binding obligation enforceable against the Party in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) all such persons as are required to be signatories to or otherwise execute this Agreement on its behalf under all Applicable Legal Requirements have executed and are authorized to execute this Agreement in accordance with such Applicable Legal Requirements;

(d) it is acting for its own account and has made its own independent decision to enter into this Agreement;

(e) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement; and

(f) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates.

7.2 Additional Representations and Warranties of City and Seller.

(a) Net Metering Capacity Associated with City. City represents and warrants to Seller that, as of the Effective Date, it is not a Net Metering Customer of any other Net Metering Facilities.

(b) Net Metering Facility of a Municipality. Seller represents and warrants to City that it shall exercise commercially reasonable and diligent efforts to develop the Facility in a manner that will qualify the Facility as a Net Metering Facility under the Net Metering Rules and that the relationship between the Parties contemplated hereunder will qualify as a Net Metering Financing Arrangement under the Net Metering Rules.

(c) No Advice. The Parties acknowledge and agree that Seller is not acting as a consultant or advisor to the City for any purpose and that the City is making its own decision to enter into this Agreement based solely on its own analysis and the advice of its own advisors.

(d) Forward Contract; Bankruptcy Code. The Parties acknowledge and agree that Seller intends that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

7.3 Covenants of City.

(a) Net Metering.

- (i) Host Customer. City shall take such reasonable action and execute any documents, that are necessary to designate (and, as necessary, re-designate) Seller to LDC as an authorized recipient of the energy billing and usage data with respect to the LDC utility meters serving the Facility. In addition, City shall take such reasonable actions and execute any documents that are necessary, and otherwise reasonably cooperate with Seller, so as to permit Seller to advocate with the LDC and/or the PUC with respect to City's rights as the LDC customer of record and Net Metering Customer, including, without limitation, for the purpose of ensuring timely and accurate recording of the Renewable Net Metering Credits.
- (ii) Allocation of Renewable Net Metering Credits to Target Buyer Accounts. The City shall, and hereby represents to the Seller that the City is authorized to, designate its utility accounts (including without limitation any accounts, such as the water treatment facility, separately billed through an aggregated power contract) with the LDC to receive Renewable Net Metering Credits generated by the Facility, such accounts identified as of the Effective Date in Exhibit C attached hereto (the "**Target Buyer Accounts**"). The City shall promptly take action and execute documents, as reasonably required, to allocate the City Allocation Percentage of the Renewable Net Metering Credits to the Target Buyer Accounts, including without limitation, a net metering service application. The City, at the request of Seller, must also consolidate any third-party supplier with LDC. City understands this is necessary to achieve the maximum offset to its cost of electricity consumption.
- (iii) Net Metering System of a Governmental Entity. The City acknowledges that the Facility will be an "Eligible Net-Metering System" of a municipality or other governmental entity within the meaning of Rhode Island General Laws § 39-26.4-2, and agrees not to take any action inconsistent with the Facility's status as such.
- (iv) Cooperation on Assurance of Net Metering Eligibility. The City agrees to provide such information and reasonable assistance to Seller as may be reasonably necessary to allow Seller to avail itself of any reasonable system established by the PUC and/or the LDC to provide certain assurances that the

Facility will be an Eligible Net-Metering System (as defined in the Net Metering Rules) once the Facility commences operation.

(b) Customer Interconnection Acknowledgement. In order to fulfill the LDC's requirements for interconnecting to the LDC distribution grid an energy generating facility that is owned by one party but is located behind the LDC utility meter of another party, Seller shall be a party to the interconnection service agreement and the City agrees, within a reasonable period of time following Seller's request, to enter into the customer interconnection acknowledgement agreement with LDC in a form substantially similar to the form of customer interconnection acknowledgement agreement attached to the LDC's interconnection tariff.

(c) No Resale of Renewable Net Metering Credits. The Renewable Net Metering Credits purchased by the City from Seller under this Agreement shall not be resold to any other Person, nor shall such Renewable Net Metering Credits be assigned or otherwise transferred to any other Person (other than to the LDC pursuant to the Net Metering Rules), without prior approval of Seller, and the City shall not take any action which would cause the City or Seller to become a utility or public service company.

(d) No Assertion that Seller is a Utility. Under no circumstances shall the City assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any Governmental Authority as a result of Seller's obligations or performance under this Agreement.

(e) Representations and Warranties. City acknowledges that the representations, warranties and covenants contained in this Agreement, including without limitation those set forth in this Article 7, are a material inducement to Seller's willingness to enter into this Agreement and are being materially relied upon by Seller. City will not cause any action to be taken which would cause any of City's representations or warranties to be false. City agrees immediately to notify Seller in writing of any event or condition which causes a change in the facts related to, or the truth of, any of City's representations, and to execute such documents, take all such further action and perform all such deeds as may be reasonably necessary in order to correct any inaccurate or untrue representation or warranty and perform any covenant or obligation required of the City hereunder or reasonably inferable herefrom. Without limiting any of Seller's other rights and remedies hereunder, City hereby covenants and agrees to indemnify and hold Seller harmless for any and all reasonable costs, expenses, and damages arising from the breach of any of the said representations and warranties and the covenants contained herein.

ARTICLE 8 FORCE MAJEURE

8.1 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance), then the reporting Party will be excused from the performance of such obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). Seller will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that Seller is not required to settle any strikes, lockouts or similar disputes

except on terms acceptable to Seller in its sole discretion. During the period in which, and to the extent that, obligations of Seller are excused by Force Majeure, City will not be required to perform or resume performance of its obligations to Seller corresponding to the obligations of Seller excused by Force Majeure.

8.2 Termination Due to Force Majeure. In the event of a Force Majeure that prevents, in whole or in material part, the performance of Seller for a continuous period of one-hundred eighty (180) calendar days or longer (provided that such period shall be extended for an additional period of up to ninety (90) calendar days if Seller has promptly commenced efforts to resume performance of its obligations and is diligently continuing such efforts), either Party may, upon thirty (30) days' notice to the other Party, terminate this Agreement, whereupon the Parties shall each discharge by performance all obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which by their terms survive expiration or termination of this Agreement.

ARTICLE 9 EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default. An "*Event of Default*" means, with respect to a Party (a "*Defaulting Party*"), the occurrence of any of the following:

A. Seller Defaults and City's Remedies.

(a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a "*Seller Default*"):

(i) except as otherwise expressly permitted in this Agreement, Seller terminates this Agreement before the end of the Term;

(ii) Seller is in breach of any representation or warranty or fails to perform any material obligation as set forth in this Agreement and (A) if such breach or failure can be cured within thirty (30) days after the City's notice of such breach or failure and Seller fails to so cure within such time period, or (B) Seller fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and

(iii) Seller becomes Bankrupt.

(b) City's Remedies. If a Seller Default described in this Section 9.1(A) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, the City may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement; provided, however, that no termination shall be effective under this Section 9.1(A)(b) unless: (i) the City has delivered to Seller written notice of its intent to terminate this Agreement, which such notice shall describe in reasonable detail the Seller Default that has occurred and is continuing ("City Termination Notice"); (ii) forty-five (45) days have passed since the City's delivery of the applicable City Termination Notice to Seller; and (iii) Seller has not cured the Seller Default set forth in the City Termination Notice as of the time of termination.

B. City Defaults and Seller's Remedies.

(a) City Default. The following events shall be defaults with respect to the City (each, a “*City Default*”):

(i) except as otherwise expressly permitted in this Agreement, the City terminates this Agreement before the end of the Term;

(ii) the City fails to make any payment when due in accordance with Article 4 and such nonpayment is not cured within ten (10) days after Seller's notice of such breach;

(iii) the City breaches any representation or warranty or any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Seller's notice of such breach and the City fails to so cure within such time period, or (B) the City fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed;

(iv) the City's net meter account is terminated, and the City fails to designate an eligible alternate account on or before such meter account termination, or otherwise causes the Facility to no longer be an Eligible Net-Metering System (as defined in the Net Metering Rules);

(v) the City becomes Bankrupt; and

(vi) the City's S&P Global credit rating falls below BBB+.

(b) Seller's Remedies. If a City Default described in this Section 9.1(B) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Article 12, Seller may exercise the following rights and remedies, each of which shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of any one or more of which shall not preclude the simultaneous or later exercise by Seller of any other rights or remedies provided for in this Agreement:

(i) terminate this Agreement; and

(ii) exercise any other remedy it may have at law or equity or under the Agreement.

9.2 Remedies Cumulative. The rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or inequity, subject, however, to such limitations on relief or the recovery of damages as are required by law.

9.3 Unpaid Obligations. The non-defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the non-defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

ARTICLE 10
CERTAIN RIGHTS AND OBLIGATIONS
FOLLOWING TERMINATION OR EXPIRATION

10.1 General. Following termination of this Agreement by either Party that is not occasioned by the other Party's default, the Parties shall each discharge by performance all obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which by their terms survive expiration or termination of this Agreement.

10.2 LDC and Regulatory Matters. Upon the termination or expiration of this Agreement without cause, City upon mutual agreement with Seller shall take such reasonable actions and execute such documents that are necessary to designate Seller or its designee as the LDC customer of record for the LDC utility meters at the Delivery Point. To the extent that the LDC does not permit termination of City's Net Metering Customer status or allocation of Renewable Net Metering Credits to the Target Buyer Accounts (as modified from time to time) as of the effective date of termination or expiration of this Agreement and instead requires termination of such allocation as of a later date, if and only if any termination of the Agreement is not the result of a Seller Default, City's purchase and payment obligations hereunder shall survive with respect to Electricity delivered by Seller to the Delivery Point and corresponding with Renewable Net Metering Credits allocated to the Target Buyer Accounts.

ARTICLE 11 INDEMNIFICATION

11.1 Indemnity. In addition to and not in limitation of any other rights and remedies available to City, Seller shall indemnify, defend (provided there is no conflict) and hold harmless City from and against all claims, damages, liabilities, losses, reasonable costs and reasonable expenses, including reasonable attorneys' fees (collectively, "*Losses*"), incurred by City directly arising out of the design, construction, permitting, operation, maintenance, repair or removal of the Facility. Seller further agrees, if requested by the indemnified party, to investigate, handle, respond to, and defend (provided there is no conflict) any such claim, demand, or suit at its own expense arising under this Article. Should the indemnified party elect to have Seller defend any such claim against the indemnified party, and there exists no conflict of interest in handling such defense, Seller shall, subject to Applicable Legal Requirements, have full, reasonable control of such defense, in its reasonable discretion, and shall keep the indemnified party and its counsel reasonably informed of the defense of such claim and no such claim shall be settled without the approval of the indemnified party, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the indemnity provided under this Section shall not extend to Losses to the extent attributable to the negligence or willful misconduct of the City and/or its officers, employees, agents, representatives, or independent contractors. In the event Seller is obligated pursuant to this provision to defend City and there is a conflict of interest, Seller shall hire alternative counsel at Seller's expense, to eliminate the conflict.

11.2 Claim Procedure. If the indemnified party seeks indemnification pursuant to this Article, it shall notify Seller of the existence of a claim, or potential claim, as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim, provided that any good faith failure to provide notice as soon as practicable shall not relieve Seller of its obligations hereunder except to the extent that Seller can reasonably demonstrate that such failure has materially and irreparably prejudiced Seller. If the indemnified party elects to have Seller assume defense and indemnification of such claim, Seller may assert any defenses which are or would otherwise be available to the indemnified party.

ARTICLE 12 LIMITATIONS

12.1 Limitation of Liability.

(a) No Liability to Third Parties. Except as otherwise provided in this Agreement, City and Seller agree that this Agreement is not intended for the benefit of any third party (other than Designated Third Parties) and that Seller shall not be liable to any third party by virtue of this Agreement.

(b) No Indirect or Consequential Damages. Except as expressly provided in this Agreement, it is specifically agreed and understood that neither Party will be responsible to the other for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement or anything done in connection therewith. This Section 12.1(b) shall apply whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise. The foregoing, however, does not apply to Seller's lost revenue under this Agreement in the event of a City Default.

12.2 Limitation on Warranties. Except as expressly provided in this Agreement, including without limitation any guarantees on delivery of Renewable Net Metering Credits listed in Exhibit C, each Party hereby disclaims any and all representations, warranties and guarantees, including warranties of merchantability and fitness for a particular purpose.

ARTICLE 13
GOVERNING LAW; DISPUTE RESOLUTION

13.1 Governing Law. This Agreement shall be construed under and governed by the laws and in the courts of the State of Rhode Island or the U.S. District Courts for the State of Rhode Island, without regard to its rules regarding choice of laws. Seller consents to accept service of process by certified mail at its address listed in Article 17 of this Agreement (as such address may be modified from time to time pursuant to Article 17).

13.2 Dispute Resolution.

(a) The Parties agree to use reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 13.2 shall be the exclusive mechanism to resolve disputes arising under this Agreement between the Parties.

(b) Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Seller and the City Council who shall use their respective good faith efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a notice that identifies with particularity the nature and the act(s) or omission(s) forming the basis of the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.

(c) In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute agree to submit the dispute to non-binding mediation. Within

fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. The period within which the mediation shall be completed shall not exceed ninety (90) days from the time the dispute arises, unless such time period is modified by written agreement of the Parties involved in the dispute, and the mediation shall be conducted in accordance with procedures mutually agreed to by the Parties. The Parties shall not be required to mediate a dispute for more than a single day of mediation, unless they otherwise agree in writing. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all Parties involved in the dispute.

(d) In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, venue for judicial enforcement shall be the Federal Courts and/or State Superior Court located in Providence County, Rhode Island. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. Each Party consents to such venue and expressly waives any objections to venue it might otherwise be able to raise.

(e) Notwithstanding anything to the contrary herein, either Party may at any time initiate proceedings to seek equitable and/or injunctive relief to prevent perceived irreparable harm.

ARTICLE 14 ASSIGNMENT; BINDING EFFECT

14.1 General Prohibition on Pledge or Assignment. Except as provided in this Agreement, neither Party may pledge or assign its rights hereunder without the prior written consent of the other Party which shall not be unreasonably conditioned, withheld or delayed.

14.2 Permitted Assignments by Seller. Notwithstanding anything to the contrary herein, Seller (which, to be clear, includes both the original named Party hereto referred to as "Seller", and such Party's successors and assigns) may, in Seller's sole discretion and without the City's consent, assign, all or a portion of its rights and obligations hereunder to: (i) an Affiliate of Seller (including a wholly owned subsidiary of Seller) that will be the owner of the Facility and/or all or substantially all of the Facility assets; (ii) an Affiliate of Seller in circumstances other than those described in clause (i); (iii) to the purchaser of all or substantially all of the assets or the memberships interests of Seller; or (iv) to an entity that acquires the Facility or, prior to the construction of the Facility, the development rights thereto. In the event of any such assignment, Seller shall provide written notice to City of the existence of such assignment, together with the name and address of the assignee, and documentation establishing that the assignee has assumed (or as of the closing of such transaction will assume) all or a portion of Seller's rights and all of Seller's obligations under this Agreement. City agrees to promptly execute any document reasonably requested of Seller in acknowledgement of such assignment and, whether or not required hereunder, in consent thereto. Seller shall, notwithstanding any assignment hereunder, remain liable under this Agreement, unless any such assignment is an assignment and assumption of all (and not a portion) of Seller's rights and obligations under this Agreement, and unless otherwise provided by the terms of such assignment agreement between Seller and the assignee, in which event Seller shall have no liability arising under this Agreement after the effective date of the assignment. Upon the request of Seller, the City shall execute a consent and agreement in a form reasonably requested by Seller.

14.3 Successors and Assigns. Subject to the foregoing limitations, the provisions of this Agreement shall bind, apply to, and inure to the benefit of the Parties and their respective permitted successors and assigns.

ARTICLE 15 **FINANCING AND RELATED MATTERS**

15.1 Special Seller Assignment Rights. Notwithstanding any contrary provisions contained in this Agreement, including, without limitation, Article 14, City specifically agrees, without any further request for prior consent, to permit Seller to assign (including, without limitation a collateral assignment), transfer, mortgage, grant security interests or pledge its rights under this Agreement (separately and collectively hereinafter referred in this Article 15, an "Assignment") as collateral for the purpose of obtaining financing or refinancing in connection with the Facility, and to sign any agreements reasonably requested of Seller or its Lender to acknowledge and evidence such agreement, provided that any such assignment shall not relieve Seller of its obligations under this Agreement. Upon the request of Seller or its Lender, the City shall execute a consent and agreement in a form attached hereto as Exhibit D, or such other form as may be reasonably requested by Seller or Lender. Among other provisions reasonably requested by Seller or Lender in a consent and agreement, the City shall:

- (a) consent to the collateral assignment for such financing of all of Seller's right, title and interest in, to and under all agreements with the City (including but not limited to this Agreement) (hereinafter referred in this Article 15, the "Assigned Agreements"), the rights, powers, and obligations associated therewith and the profits, distributions, and all other rights to payment, whether in cash, in kind, or in any other form, during their continuance and upon their termination, and the proceeds thereof, including without limitation, all rights of Seller to receive moneys due and to become due under or pursuant to the Assigned Agreements, all rights of Seller to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to or for breach of or default under any Assigned Agreement, claims of the Seller for damages arising out of or for breach of or default under any Assigned Agreement, and the right of the Seller to terminate any Assigned Agreement, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder (collectively hereinafter referred in this Article 15, the "Assigned Interests");
- (b) acknowledge the right of Lender, in the exercise of Lender's rights and remedies pursuant to the Assignment, upon written notice to City, to make all demands, give all notices, take all actions and exercise all rights of Seller under the Assigned Agreements;
- (c) agree that, if Lender notifies City in writing that, pursuant to and in accordance with the Assignment, it has assigned, foreclosed or sold the Assigned Interests, then (A) Lender or its successor, assignee and/or designee, or any purchaser of the Assigned Interests (hereinafter referred in this clause (c), a "Subsequent Owner") shall be substituted for Seller under the Assigned Agreements and (B) City shall (1) recognize Lender or the Subsequent Owner, as the case may be, as its counterparty under such Assigned Agreements and (2) continue to perform its obligations under such Assigned Agreements in favor of Lender or the Subsequent Owner, as the case may be;
- (d) agree that if Seller defaults in the performance of any of its obligations under the Assigned Agreements, or upon the occurrence or non-occurrence of any event or condition under the

Assigned Agreements which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable City to terminate or suspend its performance under the Assigned Agreements (each hereinafter referred in this clause (d), a “*default*”), City shall not terminate or suspend its performance under any Assigned Agreement until it first gives written notice of such default to Lender and affords Lender a period of at least thirty (30) days for any payment default or ninety (90) days for any non-payment default from receipt of such notice to cure such default. In the event the Lender does not cure any such default within such applicable extended cure period, City shall continue to have all rights and remedies afforded to it under such Assigned Agreement;

- (e) agree that in the event any Assigned Agreement is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, City shall, at the option of Lender exercised within 45 days after such rejection or termination, enter into a new agreement with Lender having identical terms, conditions, agreements, provisions and limitations as such Assigned Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that the term under such new agreement shall be no longer than the remaining balance of the term specified in such Assigned Agreement;
- (f) agree that Lender shall not have any liability or obligation under the Assigned Agreements as a result of the City’s consent, the Assignment or otherwise, nor shall Lender be obligated or required to (a) perform any of Seller’s obligations under the Assigned Agreements, except during any period in which Lender has assumed Seller’s rights and obligations under any Assigned Agreement or (b) take any action to collect or enforce any claim for payment assigned under the Assignment;
- (g) agree that if Lender has assumed Seller’s rights and obligations under any Assigned Agreement, Lender’s liability to the City under such Assigned Agreement and the sole recourse of City in seeking enforcement of the obligations under such agreements, shall be limited to the interest of Lender in the Facility;
- (h) agree to deliver to Lender, concurrently with the delivery thereof to Seller, a copy of any notice, request or demand given by City to Seller pursuant to the Assigned Agreements relating to a default by Seller under any Assigned Agreement; provided, however, failure of City to provide a copy of any such notice, request or demand or any other notice to Lender shall not constitute a breach by the City;
- (i) agree that that no cancellation, suspension or termination of any Assigned Agreement by City, or any other actions taken by City under such Assigned Agreement, shall be binding upon Lender or Seller without such notice, request or demand (as applicable) and the opportunity to cure during the applicable extended cure period afforded to Seller and/or Lender;
- (j) agree to waive all right of trial by jury in any action, proceeding or counterclaim arising out of or related to or in connection with this Agreement and consent to financing; and
- (k) agree that if Lender requires this Agreement to be modified, or if Seller, in good faith, requires this Agreement to be modified in order to finance the Facility, the Parties shall enter into negotiations to amend this Agreement to materially conform to such requirements and to the

original intent of this Agreement in a timely manner. If the Parties, negotiating in good faith, cannot agree on such amendments, or if Seller determines in good faith that this Agreement cannot be amended to allow the Facility to be financed in a commercially reasonable manner, then the terminating Party shall give the other Party thirty (30) days' prior written notice and this Agreement shall terminate without further liability of Seller owning the solar energy Facility to the City and of the City to Seller, provided that the City and Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

15.2 Designated Third Party Rights.

(a) Notice to Designated Third Party. City agrees to give copies of any notice provided to Seller by City to the Lender (as well as, if applicable, to any assignee or transferee permitted pursuant to Article 14) of which it has received written notice pursuant to Article 17 (each, a "**Designated Third Party**") provided that, notwithstanding anything to the contrary in this Agreement, at any given point during the Term, City shall not be required to provide notice to more than one Lender (or, if there is an assignee or transferee permitted pursuant to Article 14 then to such one assignee or transferee, as well as one Lender).

(b) Exercise of Seller Rights. Any Designated Third Party, as collateral assignee and if allowed pursuant to its contractual arrangements with Seller, shall have the right in the place of Seller, any and all rights and remedies of Seller under this Agreement. Such Designated Third Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement, subject to the terms of this Agreement.

(c) Performance of Seller Obligations. A Designated Third Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller hereunder or cause to be cured, including, without limitation, a cure by Seller at Lender's direction, any default of Seller hereunder in the time and manner provided by and subject to the terms of this Agreement. Nothing herein requires the Designated Third Party to cure any default of Seller under this Agreement or (unless such party has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but City hereby gives such party the option to do so provided any such cure, act, duty or obligation is performed in accordance with the terms of this Agreement.

(d) Exercise of Remedies. Upon the exercise of secured party remedies, including any sale of the Facility by a Designated Third Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Designated Third Party (or any assignee of the Designated Third Party) in lieu thereof, the Designated Third Party shall give notice to City of the transferee or assignee of this Agreement. Any such exercise of secured party remedies shall not constitute a default under this Agreement, unless the act of exercising such remedy itself constitutes an Event of Default under Article 9 of this Agreement, provided, however, that the exercise of such remedies shall not itself serve as cure of any Seller Default.

(e) Third Party Beneficiary. City agrees and acknowledges that each Designated Third Party, including the Lender, is a third party beneficiary of the provisions of this Article 15.

15.3 Cooperation Regarding Financing. City agrees that it shall reasonably cooperate with Seller

and its financing parties in connection with any financing or refinancing of all or a portion of the Facility for which City is a Net Metering Customer. In furtherance of the foregoing, as Seller or its financing parties request from time to time, the City shall (i) execute any consents to assignment or acknowledgements (including, without limitation, an acknowledgment for the benefit of one or more particular Designated Third Parties or prospective Designated Third Parties of the accommodations set forth in this Article 15), (ii) negotiate and deliver such estoppel certificates as an existing or prospective Designated Third Party may reasonably require, and (iii) furnish such reasonable information as Seller and its financing parties may reasonably request.

15.4 Right to Cure.

(a) City will not exercise any right to terminate or suspend this Agreement unless it shall have given each Designated Third Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Designated Third Party shall not have caused to be cured, including, without limitation, a cure by Seller at Lender's direction, the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Designated Third Party within such period and such party has so informed City in writing within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(b) If, pursuant to an exercise of remedies by a Designated Third Party, such party or its assignee (including any purchaser or transferee) shall acquire control of the Facility and this Agreement and shall, within the time periods described in the preceding subsection, cure all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

15.5 Lender's Right to Cure by Payment.

(a) If the applicable termination (or suspension) causing event that Lender receives notice of from the City, results in direct damages to the City that can be quantified as a certain sum of money, then Lender shall have the right (but not the obligation) to either (a) cure such matter (or cause to be cured such matter, including without limitation directing Seller to cure such matter) within the time period set forth in Section 15.4 of this Agreement, or (b) pay such certain sum of money to the City (including, without limitation, such sum as may be calculated pursuant to Section 4.9 above) and such payment shall be deemed a cure of the applicable matter, and this Agreement shall continue in full force and effect.

(b) Accordingly, if Lender pays (or causes to be paid) such stipulated sum to the City within thirty (30) days of the City providing a calculation of the stipulated sum, then the City shall not have the right to terminate (or suspend) this Agreement pursuant to Article 9 (or Section 8.2 or any other provision of this Agreement that might be applicable), and this Agreement shall continue in full force and effect.

(c) In addition to the foregoing, it is understood, and hereby acknowledged and agreed, that in furtherance of Section 15.4 of this Agreement, the City will not avail itself of any remedies that it might otherwise have under this Agreement (including, without limitation, remedies that may be in addition to the right to terminate or suspend this Agreement, such as, but not limited to, rights under Article 9 of this Agreement) unless and until it shall have afforded the Lender the notice and cure rights referred to in Section 15.4 (and this Section 15.5).

(d) Nothing herein limits the Lender's other rights under this Article 15 or any other applicable provisions of this Agreement.

15.6 Lender May Cause Third Parties to Cure. Without limiting the provisions herein which expressly provide that Lender may cause Seller to cure a default, the Parties hereby agree that wherever this Agreement provides Lender a right to cure, Lender may do so itself, or may cause a third party (including without limitation Seller) to effectuate such cure.

15.7 Successors and Assigns. Subject to the foregoing limitations, the provisions of this Agreement shall bind, apply to and inure to the benefit of the Parties and their respective permitted successors and assigns.

15.8 Article 15 Prevails. In the event of any conflict between the terms of this Article 15 and the terms of any other portion of this Agreement, the terms in this Article 15 shall prevail.

ARTICLE 16 CHANGE IN LAW

In the event that a change in Law occurs, including without limitation, a change in the Net Metering Rules, or the administration or interpretation thereof by the PUC or the LDC (hereinafter referred in this Article 16, a "Change in Law"), which (a) materially restricts the ability of Seller to deliver Electricity or Renewable Net Metering Credits therefrom to City, or the ability of Electricity to be delivered to the LDC or the ability of City to receive Renewable Net Metering Credits, (b) results in the Facility for which the City is a Net Metering Customer being disqualified as an Eligible Net-Metering System (as defined in the Net Metering Rules) of a municipality or results in the relationship between the Parties hereunder being disqualified as a Net Metering Financing Arrangement (unless such disqualification can be remedied in a reasonable period of time not to exceed sixty (60) days, provided, however, that City shall not be responsible to pay for any Electricity or corresponding Renewable Net Metering Credits generated by the disqualified Facility during such 60-day period), and/or (c) otherwise materially impacts the ability of either Party to perform its obligations under this Agreement, including changes in Law that result in a material increase in Seller's costs of construction and installation or continuing operation of the Facility then, upon a Party's receipt of notice of such Change in Law from the other Party, the Parties shall promptly and in good faith endeavor to negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties, subject to Applicable Legal Requirements. Without limiting the foregoing, such amendments may include an amendment and restatement of this Agreement. If there is such Change in Law and the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement of this Agreement within one hundred twenty (120) days of the aforesaid notice, either Party may terminate this Agreement without liability for such termination, provided, however, that City shall not be required to pay for any Electricity with respect to which it has not received Renewable Net Metering Credits from the LDC.

ARTICLE 17

NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and

if to Seller to: Southern Sky Renewable Energy Rhode Island, LLC
117 Metro Center Blvd – Unit #1007
Warwick, RI 02886
Attention: Kyle P. Palumbo, In-House Counsel
Email: Kyle@southernskyre.com

with a copy to: Taft & McSally LLP
21 Garden City Drive
Cranston, RI 02920
Attention: Robert D. Murray, Esq.

if to City to: Office of the Mayor
Cranston City Hall
869 Park Avenue
Cranston, RI 02910

with a copy to: Cranston City Solicitor
Cranston City Hall
869 Park Avenue
Cranston, RI 02910

if to a Designated Third Party, to the address and contact person of which City has been given notice pursuant to this Article 17.

Notices hereunder shall be deemed properly served: (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, upon receipt; or (iii) if by overnight Federal Express or other reputable overnight express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Any Party may change its address and contact person for the purposes of this Article 17 by giving notice thereof in the manner required herein.

ARTICLE 18 MISCELLANEOUS

18.1 Survival. Notwithstanding any provision contained herein or the application of any statute of limitations, the provisions of Articles 5 (environmental attributes), 9 (events of default, remedies), 10 (rights and obligations following termination), 11 (indemnification), 12 (limitations of liability), 13 (governing law, dispute resolution), 15 (financing and related matters), 17 (notices), and this Section 18 shall survive the termination or expiration of this Agreement.

18.2 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement

may only be amended or modified by a written instrument signed by both Parties hereto.

18.3 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including without limitation, all its attorneys' fees and expenses.

18.4 Relationship of Parties. Seller will perform all services under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and City hereunder are individual and neither collective nor joint in nature.

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

18.6 Cooperation. Subject to Applicable Legal Requirements, each Party acknowledges that this Agreement may require approval or review by third parties and agrees that it shall use commercially reasonable efforts to cooperate in seeking to secure such approval or review. The Parties further acknowledge that the performance of each Party's obligations under this Agreement may often require the reasonable assistance and reasonable cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term reasonably cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

18.7 Severability. If any section, sentence, clause, or other portion of this Agreement is for any reason held invalid or unconstitutional by any court, or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

18.8 Headings. The headings of Articles and Sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such Articles or Sections.

18.9 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

18.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single Agreement. Photocopy, facsimile, PDF and other electronic forms of signature shall be deemed original and binding for all purposes of this agreement.

18.11 Additional Matters. Notwithstanding anything to the contrary in this Agreement:

(a) City shall not be required to execute documents or instruments subsequent to the execution of this Agreement which will materially or unreasonably increase City's risk or obligations under

this Agreement, or result in the waiver of any of City's rights or remedies under this Agreement or at law or in equity, or require City to give an opinion, or require City to make a statement of fact of which City does not have knowledge.

(b) Any requirement that City reasonably cooperate or assist Seller shall not require City to interfere with or influence the independent regulatory, licensing, taxing, permitting or judicial functions or any official, department, board, committee, body or commission of City.

(c) This Agreement shall be subject to Applicable Legal Requirements.

(d) The City acknowledges that the services being provided by Seller under this Agreement are proprietary in nature, and not governmental, and that the Term of this Agreement is not longer than necessary to accomplish its purpose.

(e) Notwithstanding anything contained herein to the contrary, and without limiting the Seller's ability to alter the facility(ies) comprising the Facility as set forth in Section 3.1 above, the Parties acknowledge and agree that the Seller and/or one or more Affiliate(s) of Seller shall have the right to designate additional and/or different renewable energy generation facilities to generate Renewable Net Metering Credits for purchase by the City from Seller or Seller's Affiliate(s) pursuant to a separate agreement (each a "**Separate Facility**"). Upon designating each such Separate Facility, Seller (or Seller's Affiliate, as the case may be) and the City shall enter into a Site Specific Agreement (each, a "**Site Specific Agreement**") on the form attached hereto as Exhibit F identifying, among other things, the seller entity that will sell such Renewable Net Metering Credits to the City, and the location of such Separate Facility. Seller shall also send the City a notice identifying any changes to the Facility Targeted Electricity Offset (if any) as a result of such designation of a Separate Facility. The Mayor of the City shall be authorized (and, through approval and execution of this Agreement, is hereby authorized) to execute any such Site Specific Agreement on the City's behalf, without the need for any additional authorizations. Each such Site Specific Agreement shall be a separate net metering financing arrangement between the City and the Seller or its Affiliate, but such arrangements shall be on identical terms to the terms set forth herein (except as set forth in each Site Specific Agreement to the contrary). Without limiting the foregoing, Seller shall not be liable for any acts of Seller's Affiliate(s) under, through or arising out of any such Site Specific Agreement (including without limitation any defaults by Seller's Affiliate thereunder) nor shall Seller be otherwise deemed a part of any such Site Specific Agreement. Likewise, Seller's Affiliate(s) shall not be liable for any acts of Seller under, through or arising out of this Agreement (including without limitation any defaults by Seller hereunder), the purpose and intent being that this Agreement and each such Site Specific Agreement shall be considered separate and distinct net metering financing arrangements by and between the signatories thereto.

[Remainder of Page Intentionally Blank – Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives under seal as of the Effective Date.

CITY OF CRANSTON, RHODE ISLAND

By: _____
Name: _____
Title: _____

**SOUTHERN SKY RENEWABLE ENERGY
RI-NATICK AVE-CRANSTON, LLC**

By: _____
Name: Ralph A. Palumbo
Title: Manager

Exhibit A

PROPERTY

The Property may include, without limitation, the real property known as the following:

1. Portions of 0 Natick Avenue, Cranston, Rhode Island (Assessor's Plat 22, Section 3, Lots 108 + 119)

In addition, in the event Seller designates additional or different renewable energy generation facilities to be included in the definition of Facility pursuant to Section 3.1 of the Agreement, then the real property upon which such additional facility(ies) is(are) located shall be included in the definition of "Property".

Exhibit B

**CALCULATION OF
RENEWABLE NET METERING CREDIT PRICE**

For each Billing Cycle in which Renewable Net Metering Credits are delivered to the Delivery Point, the price to be paid by the City (the "***Renewable Net Metering Credit Price***") shall be equal to Seventy-Two and 50/100 Percent (72.50%) of the Net Metering Credit Value.

Exhibit C

DELIVERY OF RENEWABLE NET METERING CREDITS

1. The City's Total Targeted Electricity Offset is estimated to be **23,263,246 (+/-) kWh annually**, and the Facility Targeted Electricity Offset is initially estimated by Seller to be 10,267,000 (+/-) kWh annually. The Seller projects that the Facility will be capable of an output of up to 10,267,000 (+/-) kWh annually for the first year following the Commercial Operation Date (the "**Designed Output**"). Following such first year, the Designed Output may be lowered each year to not less than 0.50% of the Designed Output for the prior year due to engineering constraints set by the LDC (the "**Adjusted Designed Output**"). Notwithstanding anything contained herein to the contrary, in the event the size or location of the Facility is altered pursuant to Section 3.1 above, then the Designed Output shall be modified to match the actual output capable of being produced at the Facility as so altered.
2. The "**City Allocation Percentage**" shall be a percentage, calculated by dividing the Facility Targeted Electricity Offset (which may be modified from time to time pursuant to Section 3.1 and in the definition of Facility Targeted Electricity Offset) by the Designed Output or Adjusted Designed Output, as the case may be. For illustration purposes only, if the Facility Targeted Electricity Offset was 10,267,000 kWh and the Designed Output (or Adjusted Design Output) of the Facility was 10,267,000 kWh, the City Allocation Percentage would be 100.00% ($10,267,000/10,267,000$). On an annual basis, City shall purchase the City Allocation Percentage of all the Renewable Net Metering Credits generated by the Facility. Said Renewable Net Metering Credits shall be net metered to its accounts designated in Paragraph 3 below. Notwithstanding the foregoing, City may purchase additional Renewable Net Metering Credits if available.
3. Target Buyer Accounts include, without limitation, the following:

All of the City's accounts, including without limitation the accounts servicing the municipal buildings, school system, housing authority, and water district. Notwithstanding the foregoing and for the avoidance of doubt, the school system has entered into a separate agreement with a different seller/developer and for those meters already designated for net metering shall be excluded from the "Targeted Buyer Accounts" for purposes of this Agreement.

Exhibit D

Form of Consent

Dear City of Cranston, Rhode Island:

We refer to the Net Metering Financing Arrangement (the “Agreement”), dated _____, by and between Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC (the “Company”) and The City of Cranston (the “City”).

Pursuant to Section 15.1 of the Agreement, we hereby notify you that _____, as the direct owner of all of the equity interests of the Company, has entered into a Note Purchase Agreement, dated as of _____, with _____, as purchaser (“Purchaser”). In connection with such financing, Purchaser and _____, as collateral agent and depositary in connection therewith (the “Agent” and collectively with the Purchaser, the “Secured Parties”), have been granted a collateral assignment of the Agreement.

The Secured Parties shall have all rights set forth in Section 15.1 of the Agreement, and any notices to the Secured Parties shall be given to the addresses set forth above, including all notices sent to the Company.

In addition, in accordance with the terms of the Depositary Agreement, dated as of [____], 20____, between Issuer and the Agent, the Company hereby directs the City to pay all amounts it is obligated to pay from time to time under the Agreement in the manner required by the Agreement to the account specified on Exhibit A hereto maintained with the Agent, or to such other person or account as shall be specified from time to time by the Agent to the City in writing.

All other terms and conditions of the Agreement remain in full force and effect as of the date hereof, and nothing herein is intended to otherwise amend or modify the Agreement.

[signature page follows]

Very truly yours,

**SOUTHERN SKY RENEWABLE ENERGY RI-
NATICK AVE-CRANSTON, LLC**

By: _____

Acknowledgment and Consent:

THE CITY OF CRANSTON, RHODE ISLAND

By: _____

Exhibit A

Payment Instructions

Exhibit E

Form of Ground Lease

[SEE ATTACHED]

LEASE AGREEMENT

This Lease Agreement ("Lease") is dated as of _____, 2019, (the "Effective Date"), and is entered into by and among **Natick Hill Farm, LLC**, a Rhode Island limited liability company with an address of 1936 Phenix Avenue, Cranston, RI 02921 (hereinafter together with his successors and assigns referred to as, "Lessor"), and **Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC**, a Rhode Island Limited Liability Company, for itself and any and all its successors and assignees permitted hereunder, with a principal office at Southern Sky Renewable Energy Rhode Island, LLC - c/o Ralph A. Palumbo, 117 Metro Center Blvd – Suite 1007, Warwick, RI 02886 (together with its successors and assigns, "SSRE") and _____ (hereinafter the "Co-Lessee" or "PENMFA Counterparty") (SSRE, its successors and assigns and the Co-Lessee are hereinafter collectively the "Lessee") Lessor, Lessee and Co-Lessee are sometimes referred to herein as "the Parties". The Parties agree and acknowledge that this Lease supersedes and replaces that certain Lease Agreement dated _____, 2019 between Lessor (as lessor) and SSRE (as lessee).

WHEREAS, Lessor is the owner of the real property more particularly described in the attached Exhibit A (the "Property");

WHEREAS, SSRE is interested in leasing that portion of the Property shown on Exhibit B as the Lease Area (herein referred to as the "Premises"), for the purpose of installing and operating thereon an approximately 9 Megawatt Direct Current ("MW DC") (+/-) solar photovoltaic System;

WHEREAS, SSRE is in the business of developing, installing, owning and operating such a System;

WHEREAS, SSRE desires to obtain the exclusive right to occupy the Premises and to develop, design, engineer, access, construct, monitor, install, own, maintain and operate the System to be located on the Premises;

WHEREAS, SSRE shall own and in its discretion sell or otherwise transfer to others the electrical output of the System or corresponding Net Metering Credits.

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

1. Premises and Related Rights.

- a) The Premises consist of a portion of the Property designated by the City of Cranston Tax Assessor as Lot 108 on Assessor's Plat 22, as presently constituted, and as more particularly described in Exhibits B and B1, attached hereto and by reference made a part hereof, including access rights via the gravel road commencing off Natick Avenue and bordering the Premises as more particularly identified in Exhibit B1 and subject to any and all easements of record; expressly reserving to Lessor, its successors and assigns (1) a twenty (20) ft. (+/-) wide right of way on the north side of the Premises in a location to be determined by SSRE in its sole discretion and improved by SSRE to a width of not less than fifteen (15) ft. (+/-) with a gravel or paved surface as determined by SSRE (hereafter the "Right of Way") and (2) a 50' right of way on the southerly side of the Premises co-extensive (i.e. overlapping) with the right of way (the "Pipeline ROW") recorded in Book 739 at Page 762 ("Instrument"). The Pipeline ROW may be used by

Lessor, its successors and assigns for all purposes reserved to the grantor in said Instrument to the extent, in Lessee's reasonable determination, such purposes do not interfere or otherwise adversely affect in any material respect the System's proper and optimal operation. The Lessee shall comply with the provisions of the Instrument to the extent the Premises is co-extensive (i.e. overlapping) with the Pipeline ROW and only to the extent Lessor is likewise required by the Instrument to comply therewith, and Lessee shall indemnify, defend and hold harmless the Lessor for all lost cost, and reasonable expense, including reasonable attorney's fees resulting from any violation by Lessee of the terms thereof and not resulting from the negligence or willful misconduct of Lessor and/or Lessor's agents, successors, assigns, representatives, visitors, or invitees. The Pipeline ROW may be used by Lessee for access and to furnish utilities to the Premises if not prohibited by the Instrument. The Right of Way may also be used by Lessor, its successors and assigns (i) to access and furnish utilities to that portion of the Property not included in the Premises; (ii) to access and furnish utilities to other property owned by Lessor or its affiliates namely Lot 119 and Lot 133 both on Plat 22, and any adjacent property acquired by Lessor, its affiliates, its successor and assigns, and including all uses that may be necessary or convenient to the development of house lots on Parcel A; and (iii) with Lessee's prior consent (which consent shall not be unreasonably withheld or delayed or conditioned), for any other purpose which, in Lessee's reasonable determination, does not interfere or otherwise materially and adversely affect in any respect the System's proper and optimal operation. Lessor may at its sole expense, improve the Right of Way so long as the construction does not impair Lessee's ability to access the Premises during construction and Lessor controls dust and debris during construction so as not to negatively impact Lessee's solar panels. Lessor shall provide Lessee with copies of plans and a description of the proposed improvements to the Right of Way not less than sixty (60) days prior to commencement of construction. Within fourteen (14) days of Lessee's receipt of said plans and description of the proposed improvements, Lessee shall either consent to the improvements or reject the proposed improvements with an explanation for the rejection. No improvements shall be made to the Right of Way by Lessor unless and until Lessee consents to said improvements, which consent shall not be unreasonably withheld. Lessor agrees to indemnify Lessee, or in the event of the use by any successor or assignee, then such successor or assignee by such use or improvement, for all damages and losses resulting from the improvement of or use of the Right of Way by Lessor, its subcontractors, successors, assigns or invitees as applicable. Upon Lessor's completion of improvements to the Right of Way, Lessor, its successor and assigns, shall thereafter be responsible for maintenance and upkeep of the Right of Way. In the event of Lessor's failure to maintain the Right of Way, Lessee shall have the right to perform necessary maintenance and upkeep and shall be entitled to offset rent otherwise due to Lessor.

- b) Subject to receipt of the first rent payment and to the terms of this Lease, Lessor hereby leases the Premises to Lessee to occupy and to develop, design, engineer, construct, build, access, monitor, install, own, operate, fix, update and maintain thereon, the System for the generation and distribution of electrical power (the "Permitted Use"), and for no other purpose. The Permitted Use also includes the right to test, survey and check title of the Premises, decommission of the System as set forth in Section 4 of this Lease and the performance of any other acts necessary to the successful and secure operation of the System, as determined by SSRE in its reasonable discretion.
- c) Lessor represents and warrants that the Premises will be delivered to Lessee "As Is".

- d) Lessor represents and warrants that to the best of Lessor's Knowledge: (i) at the time of the commencement of the Lease, the Premises will be in compliance in all material respects with all applicable federal, state and local laws (including but not limited to Environmental Laws), regulations, bylaws, codes and other legal requirements applicable to the Premises and Lessor shall provide any available documentation of the same as reasonably requested by the Lessee, and (ii) there is currently no and there has previously been no actual or threatened release of any Hazardous Substances on, under, or about the Premises.
- e) Lessee shall not be liable for any environmental conditions or violations of any Applicable Law on the Premises arising from, or related to, acts or omissions occurring prior to the Effective Date, including, but not limited to, conditions related to any Hazardous Substances. SSRE shall purchase an environmental liability policy in the form attached hereto, with term, deductible and policy limits in its sole discretion, to mitigate an environmental matter. In the event of a claim arising out of an environmental condition that predates the Effective Date, Lessor shall be responsible to pay the policy deductible in a timely manner. The deductible shall be in an amount not to exceed _____ Dollars (\$______). The payment of such deductible by Lessor shall be deemed a complete satisfaction of all liability of Lessor to Lessee for any liability hereunder for any environmental condition or issue that predates the Effective Date. In the event of any environmental issues, Lessor and SSRE shall collaborate in good faith on the method to address and timely resolve such environmental matters. Lessor shall be named an additional insured on said policy. Subject to the immediately following sentence, Lessor and Lessee shall mutually select the contractor (which may be a contractor that is an affiliate of the Lessor) to perform any cleanup which said contractor may legally perform with full credit for the reasonable charge therefor against the policy deductible. The parties agree and acknowledge that the selection of said contractor shall be through a competitive bidding process at market pricing and subject to commercially reasonable terms. The policy shall waive all insurer's rights of subrogation against Lessor and his/its successors and assigns.
- f) SSRE shall obtain at its sole cost and expense, all required Governmental Approvals, including without limitation, permits and approvals from Rhode Island Department of Environmental Management (DEM) and such other permits and approvals as may be necessary from the Federal government, the State of Rhode Island, the City of Cranston, and/or the PENMFA Counterparty.
- g) Definitions. Capitalized terms not otherwise defined in this Lease have the meanings assigned to them in Exhibit C.

2. Rent and Deposit.

- a) For the period commencing on the Effective Date and continuing until the earlier of October 31, 2019 or the first day of the month following the date that the System has been commissioned and achieved Commercial Operations (the "Pre-Commercial Operations Term"), SSRE shall pay Lessor, on or before the Effective Date, rent in the amount of _____ Dollar. If Commercial Operations have not been achieved by October 31, 2019 then, unless terminated in accordance with this Lease, SSRE shall pay to Lessor an amount equal to \$_____ per month on the first day of each month until the earlier of (i) Commercial Operations or (ii) the later of (a) June 15, 2020, or (b) the

expiration of applicable appeal periods for all Governmental Approvals, but in no event later than January 1, 2022 unless otherwise agreed by Lessor and Lessee

- b) Commencing on the Commercial Operations Date and on the first (1st) day of each year thereafter during the term of this Lease, SSRE shall pay annual rent payments ("Base Rent") to Lessor in the amount of _____ Dollars (\$_____) per installed system nameplate capacity MW DC, in twelve (12) monthly installments, on the first day of each month subject to escalation as set forth below. The System nameplate capacity is currently estimated to be a 8.10 MW DC System for a total year one annual Base Rent estimated at \$_____ (actual amount to be determined after final system sizing has been determined), provided that, the minimum Base Rent will be no less than _____ Dollars (\$_____) per year. Rent for any partial months shall be pro-rated based upon the rent set forth above.
- c) Base Rent (and minimum Base Rent) shall escalate by one percent (1.00%) of the prior year's Base Rent (or minimum Base Rent as applicable) each year of the Term and Renewal Term(s) starting in year two (2) of the Lease Term. The estimated Base Rent is attached hereto as Exhibit C.
- d) Real Estate taxes will be paid by SSRE to the City of Cranston as "Additional Rent" in accordance with and subject to the Tax Ordinance. "Additional Rent" shall include without limitation any and all real estate taxes assessed on the Premises or any part thereof, levies, personal property taxes, betterments or assessments, fees or charges, or other costs of whatever nature, that are assessed or chargeable during the term of this Lease in relation to the Premises, SSRE's use thereof, and/or the System. Base Rent and Additional Rent shall hereinafter be collectively referred to as "Rent". In the event that Lessor is successful in obtaining a reduction in the real estate taxes levied against the Premises, Lessee shall nonetheless continue paying the Additional Rent at the rate in effect prior to said reduction (meaning any reduction obtained by Lessor shall not affect the Additional Rent paid by Lessee hereunder). Notwithstanding the foregoing, it is the intention of the parties that this Lease is an "absolute net lease" and Lessor shall receive the Base Rent, Additional Rent and other sums required of Lessee under this Lease, undiminished from all costs, expenses and obligations of every kind relating to the Premises other than those otherwise described in this Lease, and those related to Lessor's obligations related to pre-existing environmental conditions at the Premises (if any) as set forth herein, which shall arise or become due during the Lease term, all of which shall be paid by Lessee.
- e) In addition to the rent as hereinabove provided, Lessee agrees to pay Lessor, simultaneously with the execution of this Lease, a sum equal to \$_____ (\$_____) / 12) (the "Security Deposit"), which amount shall constitute last month's rent and additional security for the period following the Pre-Commercial Operations Term, which shall be held by Lessor in an FDIC insured bank account, during the term hereof, or any extension, as security for the full, faithful, and punctual performance by Lessee of all covenants, obligations, and conditions of this Lease, and as security for any payments due hereunder. In the event of any early termination made in accordance with this Lease, Lessor shall be entitled to keep the Security Deposit and the Removal and Restoration Period shall commence.
- f) First Option to Extend-Rent. Should SSRE exercise Lessee's first option to extend pursuant to the terms of this Lease for an additional five (5) years (the "First Option

Term”), the Base Rent shall increase by 1.00% per year in each year of the First Option Term. All other payment terms, including, without limitation, Additional Rent, shall remain in effect during the First Option Term.

- g) Second Option to Extend- Rent. Should SSRE exercise Lessee's second option to extend pursuant to the terms of this Lease for an additional five (5) years beyond the First Option Term (“Second Option Term”), the Base Rent shall increase by 1.00% per year in each year of the Second Option Term. All other payment terms, including, without limitation, Additional Rent, shall remain in effect during the Second Option Term.
- h) Lessee Responsibility for Rent and Deposit and Other Amounts. Notwithstanding anything to the contrary contained herein, it is understood and agreed that SSRE shall have sole responsibility for payment of all amounts due or that may become due to Lessor under this Lease, including, without limitation, rent, utilities, insurance expense and indemnification expenses. Notwithstanding a party's status as Co-Lessee hereunder, Lessor agrees that any Co-Lessee shall not be responsible for payment of any amounts that are due or that may become due under this provision of the Lease.

3. Term and Termination; Holdover.

- a) The Pre-Commercial Operations Term of this Lease shall commence and terminate as set forth above.
- b) Subject to the provisions herein concerning payment of Base Rent, the term of this Lease shall commence on the Commercial Operations Date, and shall continue until the twenty-fifth (25th) anniversary of said date at which time, unless otherwise extended pursuant to Section 2(f) or (g) above or previously terminated in accordance with provisions of this Lease, the Lease Term shall expire (the “Expiration Date”). Within ten (10) days of the Expiration Date Lessor shall return the entire Security Deposit plus interest accrued thereon minus any deductions taken by Lessor in accordance with the terms of this Lease to SSRE by wire transfer of immediately available funds to an account designated in writing by SSRE. If the Security Deposit is not returned to SSRE as aforesaid within ten (10) days after written notice from SSRE, Lessor shall pay to SSRE an amount equal to .5% of the outstanding amount of the Security Deposit for each week it remains unreturned up to a maximum of 20%.
- c) SSRE shall provide written notice to Lessor of commencement of construction.
- d) SSRE shall have two options to extend the Lease for five (5) additional years each by providing Lessor with written notice of its election to extend on or before expiration of the Lease Term or the extended term. If this Lease is terminated, SSRE shall, at its sole cost and expense, remove the System and restore the Premises in accordance with Section 4 hereof. In connection with such removal and restoration, SSRE and its affiliates and subcontractors shall have a license to access the Premises for the purpose of completing the removal and restoration.
- e) If for any reason the PENMFA is terminated, Lessor agrees to release the Co-Lessee from any and all obligations under this Lease. Furthermore, upon termination of the PENMFA the Co-Lessee agrees that its rights as a (co) Lessee under this Lease will terminate and the Lessor and the Co-Lessee will have no further obligations to each other. If the PENMFA is terminated through no fault of SSRE then SSRE will use best

efforts to enter into a new net-metering credit arrangement or other off-taker agreement. If SSRE is unable to do so within 120 days and an additional reasonable allowance for extension then it may terminate early this Lease.

- f) **Holding Over.** If Lessee remains in possession of the Premises after the Removal and Restoration Date or has not completed removal of the System by the Removal and Restoration Date without the execution of a new lease, Lessee, at Lessor's option, shall be deemed to be occupying the Premises as a Lessee from month to month, subject to all of the terms and conditions, provisions, and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy, except for Base Rent, which shall be in an amount equal to 150% of the then current Base Rent or market rate, whichever is higher.
4. **Removal of System at Expiration.** Upon the expiration or earlier termination of the Lease, SSRE shall, at its sole cost and in accordance with all Applicable Laws, remove the System and restore the Premises to their original condition, exclusive of utility installations, building foundations installed upon the Premises and the necessary site civil work (blasting, grading, access road upgrades, etc.) required to install the System, by the Removal and Restoration Date. Lessee shall pay Rent at a rate of \$ _____ per month during the Restoration and Removal Period and if not removed by said date, then SSRE shall pay rent as set forth in Section 3(f). On or before Commercial Operation, SSRE shall provide Lessor with an estimate from an independent third-party engineer or consultant of SSRE's choosing, establishing the cost required to remove the System from the Premises and to repair any damage caused to the Premises from such removal. No later than ten (10) days prior to the date on which the System achieves Commercial Operation SSRE shall establish an interest bearing escrow account to which the Lessor shall be a party at a FDIC insured financial institution selected by SSRE, in the amount established above ("Removal Escrow") to secure the funding of the removal. The Removal Escrow shall be maintained during the Term of this Lease. Interest on the Removal Escrow funds shall be held in the Removal Escrow Account and shall only be released in accordance with the terms of the Removal Escrow agreement. Within a reasonable time after the Expiration Date, Lessor shall cooperate with SSRE and allow SSRE, its successors or assigns to use the Removal Escrow account to fund the cost of removal. Alternatively, in the event that SSRE, its successors or assigns fully satisfies all of its obligations with respect to the removal of the System and the repair and restoration of the Premises on its own account to Lessor's reasonable satisfaction, Lessor shall acknowledge the same in writing, and the then remaining balance of the Removal Escrow shall be released to SSRE, its successors or assigns in accordance with the terms and conditions of the escrow agreement.
5. **System Construction.** SSRE shall conduct a pre-construction meeting with Lessor before commencement of any construction activities. SSRE shall, at its sole cost and expense, cause the System to be designed, engineered, permitted, installed, constructed and removed, and shall perform any work at the Premises expressly permitted by the terms of this Lease, including but not limited to repairs or modifications to the System, in accordance with all Applicable Laws, good industry practices, the requirements of any Governmental Authority (including without limitation the Department of Environmental Management) and Local Electric Utility, and any and all applicable manufacturer's warranties and instructions. SSRE shall be responsible for the security of all materials and equipment and safety of all persons at the Premises, and shall reasonably remove debris at the end of each day during construction and maintain the Premises in a safe condition throughout the work. During design and construction of the System, SSRE shall keep Lessor informed regarding the progress, scheduling, and coordination of the work, and shall conduct progress meetings with

representatives of Lessor. Any signage on the Premises or Improvements shall be in compliance with all applicable laws and Lessee shall obtain Lessor's written consent prior to installing any signs, such consent not to be unreasonably withheld. Subject to the immediately following sentence, R. Rossi Farm & Excavation, Inc. and Earthworks, LLC and their successors and assigns shall have a right of first refusal on all contracts for excavation, tree cutting, removal and maintenance, mowing, landscaping and grading on the Premises and any portions of the remainder of the Property on which Lessee is entitled to perform work. The parties agree and acknowledge that the selection of said contractor shall be through a competitive bidding process at market pricing and subject to commercially reasonable terms.

6. **System and Output Ownership.** Lessor acknowledges and agrees that SSRE shall be the exclusive owner and operator of the System, that all alterations, additions, improvements, installations or equipment used in connection with the installation, operation or maintenance of the System or comprising the System are, and shall remain, the personal property of SSRE and shall not become fixtures, notwithstanding the manner in which the System is or may be affixed to any real property of Lessor and neither Lessor nor any affiliate, lender or successor in interest of Lessor shall have any right, title or interest in the System or any component thereof, notwithstanding that the System may be physically mounted or adhered to the Premises or structures, buildings and fixtures on the Premises. Lessor shall have no development or other interest in the System or other equipment or personal property of SSRE installed on the Premises, and SSRE may remove all or any portion of the System at any time and from time to time as SSRE may require. 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 or any portion thereof.

Lessor acknowledges that SSRE is the exclusive owner of electric energy generated by the System and owner of all environmental attributes, tax attributes and environmental incentives attributable to the System.

7. **Access to Premises.** Commencing on the Effective Date and throughout the Lease Term and subject to the terms of this Lease, SSRE shall have the exclusive right to enter upon the Premises to undertake tests, inspections, surveys and investigations reasonably necessary for construction of the System ("Tests") subject to advance approval of Lessor, which shall not be unreasonably withheld, provided that SSRE shall indemnify, hold harmless and defend Lessor from and against any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of the Tests, and provided further that SSRE shall restore the areas of the Tests to their original condition, and shall not be permitted to perform any destructive testing or inspections. Lessee shall have all insurance required in Exhibit E before occupying the Premises provided that, the Environmental Insurance shall be obtained prior to Construction Commencement. SSRE shall take all precautions against any injury to the Premises and adjacent property and structures and maintain the Premises substantially in its original condition. Lessee may also use the Premises for the temporary construction lay-down, storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and temporary facilities reasonably necessary during the furnishing, installation, interconnection, testing, commissioning, deconstruction, disassembly, decommissioning and removal of the System, provided that SSRE shall reasonably remove trash and debris from the space so designated, and shall restore the space substantially to its original condition promptly after such temporary use. Lessee shall at all times exercise reasonable care and conduct itself in accordance with Applicable Laws and in a professional manner when at the Premises, and shall observe the reasonable requests of Lessor, including, but not limited to, when entering and exiting the

Premises, and in the storage of equipment and materials at the Premises. Lessee shall not obstruct reasonable access to the Premises. In addition to any right of access provided under this Lease, Lessor shall from time to time, upon two (2) Business Days' notice, have access to inspect the Premises during the Lease Term (including, without limitation, during construction and installation of the System); provided that in the event of an emergency, Lessor may enter the Premises without the need to provide a two-business-day notice, but shall in such event provide oral or written notice to Lessee as soon as reasonably practicable.

8. Representation and Warranties of the Parties as to Authorization and Enforceability. Each Party represents and warrants that the execution by such Party of this Lease has been duly authorized, does not and will not require any further consent or approval of any other person or entity, other than the Governmental Approvals required to be obtained under the Lease. This Lease constitutes a legal and valid obligation of such Party, enforceable against it in accordance with its terms, except as may be limited by Applicable Law.
9. Representations, Warranties and Covenants of the Lessor and Lessee; Quiet Enjoyment.
 - a) Lessor's Title to Premises. Lessor represents and warrants that it has a fee simple interest in title to the Premises. Subject to Applicable Law, and the terms of the Lease, and so long as Lessee is not in default of the Lease, Lessor agrees that Lessee shall have quiet enjoyment of the Premises subject to easements now of record; provided, however, in the event of any mortgages on the Premises, Lessor shall obtain Subordination, Non-Disturbance and Attornment agreements from all mortgagees in a form reasonably acceptable to Lessee and its lenders. Lessor represents to Lessee that, to the best of Lessor's knowledge, there are no covenants, restrictions, rights of way, easements or other encumbrances on the Premises which will prevent the Lessee's right of access and use of the Premises for the purposes described herein other than as set forth in Exhibit A. Lessee shall comply with and honor such easements, and SSRE shall indemnify, hold harmless and defend Lessor from and against any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of the violation of such easements now of record by SSRE, and its agents and contractors.
 - b) Lessor's Alienation of Premises. Lessor may sell, mortgage, assign or otherwise alienate the Premises after providing Lessee at least thirty (30) days prior written notice thereof, which notice shall identify the transferee, the Premises to be so transferred and the proposed date of the transfer, provided that, the party obtaining such security interest executes a Subordination, Non-Disturbance and Attornment Agreement as defined below. Lessor agrees that this Lease shall run with the Premises and survive any transfer of any of the Premises. In furtherance of the foregoing, Lessor agrees that it shall cause any purchaser, tenant, assignee, mortgagee, pledgee or any party to whom a lien has been granted to execute and deliver to Lessee a document acknowledging Lessee's rights in the Premises as set forth herein including without limitation, an acknowledgement by the transferee that it has no interest in the System and shall not gain any interest in the System by virtue of the Lessor's transfer.
 - c) No Interference With and Protection of System. Excluding requirements of Applicable Law and the terms of this Lease, Lessor will not conduct activities on, in or about the Premises that will cause material damage to, or impairment of the System or otherwise adversely affect the operation thereof. The System shall be operated, maintained and repaired by SSRE or its permitted assignee at its sole cost and expense.

- d) Non-Disturbance Agreements. Upon SSRE or Lender's reasonable request, Lessor shall obtain a Non-Disturbance and Attornment Agreement in favor of SSRE from any third party who currently has or in the future obtains an interest in the Premises, reasonably in accordance with the form attached hereto as Exhibit I ("SNDA"). Lessor shall use its best efforts to ensure that any such SNDA shall: (i) acknowledge and consent to the Lessee's rights to the Premises and the System under this Lease; (ii) acknowledge that the third party has no interest in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this Lease; (iii) acknowledge that the third party's interest in the Premises (if any) is subject to Lessee's interest under this Lease; (iv) and agrees not to disturb Lessee's possession of the Premises absent Lessee's default hereunder.
- e) Insolation. SSRE shall have the right to remove trees on the west side of the Property during construction of the solar field, as follows: SSRE shall have the right to remove trees on the Property within the area lying one hundred (100) feet to the west boundary line of the Premises that interfere with insolation provided such area is graded after removal. Lessor shall not construct or permit to be constructed any structure of any height within the area lying one hundred (100) feet to the west boundary line of the Premises that would adversely and materially affect insolation of the System, that is no structure shall have a distance-to-height ratio in excess of 2:1. For illustration purposes only, (i) any structure ten (10) feet from said west boundary line may not exceed five (5) feet in height, and (ii) any structure one hundred (100) feet from said west boundary line may not exceed fifty (50) feet in height.. Lessor shall have the right to landscape the area along the Right of Way provided that the landscaping does not create any shade cast on the solar panels.
- f) Liens. Lessor shall not create any mortgage, lien (including mechanics', labor or materialman's lien), security interest, or similar encumbrance on or with respect to the System or any interest therein. Nothing herein shall prevent the Lessor from assigning its rights hereunder in connection with a sale of the Premises, or with any financing related to the Premises, or from mortgaging the Premises in accordance with the terms of this Lease.
- g) Representations Regarding Security Interest in System. Lessor acknowledges and understands that, in addition to a Leasehold Mortgage, part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest in the System under the Uniform Commercial Code ("System Security Interest" and together with the Leasehold Mortgage, referred to as the "Security Interest"). Lessee acknowledges and agrees, however, that, notwithstanding anything to the contrary in this Lease, the Security Interest and Lessee's leasehold estate shall be subordinate to the interest of the Lessor in the Premises and subject to the terms of this Lease.
- h) Utilities. SSRE shall be responsible for obtaining and paying for all utilities used at the Premises, including, without limitation, electricity and water. Separate meters for such utilities shall be installed and maintained at SSRE's sole cost and expense, and SSRE shall be responsible for all utility and other related expenses.
- i) Lessor and Lessee agree that Lessee will pay all real estate taxes and other amounts described in Section 2(d) directly to the City of Cranston or other applicable Governmental Authority. Within 10 days of receipt thereof, Lessor shall provide notice

to SSRE of any notices received by Lessor from the City of Cranston or any other Governmental Authority relating to the Property or any taxes due or owed on the Property or the System. SSRE shall have thirty (30) days or such shorter period as when same may be due to pay amounts due under such notices, together with all charges resulting from any late payment.

10. Representations, Warranties and Covenants of Lessee. Lessee represents and warrants that it is not an electric public utility, investor owned utility, a municipal utility, a merchant power plant or electrical corporation as defined under Rhode Island law.

- a) Liens. Except for a Lender's Security Interest, or ownership of Lessee's interest, in this Lease, Lessee's personal property or the System, Lessee shall not directly or indirectly cause, create, incur, assume or, if arising out of Lessee's activities or omissions at the Premises or pursuant to this Lease, suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the Premises, and agrees to forthwith discharge or bond, at its sole expense, any such encumbrance or interest that attaches to the Premises. In addition to, and not in limitation of, any other rights and remedies available to Lessor, SSRE shall save, hold harmless, and indemnify Lessor from and against any and all damages, claims, liabilities, losses, costs and expenses, including attorneys' fees, arising out of any such liens and any failure of Lessee to comply with this section.
- b) If a lien is recorded against the Premises and/or the System on account of work done or caused to be done by Lessee, Lessee shall have thirty (30) days following the date of recordation in which to cause said lien to be removed. Should Lessee receive notice of any claims of lien filed against the Premises, or of any action affecting the title to the Premises, it shall immediately furnish Lessor with written notice thereof. If Lessee is in default in paying any charge for which a mechanics' lien claim and suit to foreclose the lien shall have been filed, Lessor may, but shall have no obligation to, pay said claim and any costs, and the amount so paid, together with reasonable attorneys' fees incurred in connection therewith, shall be immediately due and owing from Lessee to Lessor, and Lessee shall pay the same to Lessor with interest at the maximum lawful rate (or if there be no prescribed maximum rate, at the rate published by the Wall Street Journal as the prime rate plus one percent (1%) per annum) from the dates of Lessor's payments, or in the event such rate is no longer published such reasonably equivalent index as Lessor and Lessee may agree. Lessor, or its representatives, shall have the right to go upon the Premises at all reasonable times to post and keep posted thereon notices of non-responsibility, or such other notices as Lessor may deem necessary for the protection of Lessor's interest in the Premises. Before the commencement of any work which might result in any such lien, Lessee shall give Lessor written notice of its intention to do so in sufficient time to enable the posting of such notices; provided, however, in no event shall Lessee give said notice to Lessor less than ten (10) business days prior to the commencement of such work.
- c) Statutory Filings. SSRE shall be responsible for any statutory filings required by law.
- d) Notice of Damage or Emergency. SSRE shall immediately notify Lessor if SSRE becomes aware, through discovery or receipt of notice or otherwise, (i) of any damage to or loss of the use of the System, or Premises; (ii) of any event or circumstance that poses an imminent risk to human health, the environment, the System or Premises; or (iii) of

any interruption or material alteration of the energy supply to or from the Premises or the System.

e) [Intentionally Omitted.]

11. Hazardous Substances. Lessee shall not introduce, use, or cause to be introduced, any Hazardous Substances on, in or under the Premises except to extent necessary to complete the intended and permitted use under this Lease and in compliance with all Applicable Laws. If Lessee becomes aware of any such Hazardous Substances, it shall make all reasonable efforts to notify the Lessor of the presence of such Hazardous Substances in writing. Lessor agrees that it will not, and will not allow others under its control to use, generate, store or dispose of any Hazardous Substances on, under, about or within the Premises in violation of any law or regulation.

- a) SSRE Indemnity. SSRE agrees to indemnify, defend, hold harmless Lessor from and to assume all claims, suits, penalties, obligations, damages, losses, liabilities, payments, costs and expenses (including without limitation attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines incurred pursuant to any Environmental Laws) arising out of or related to any spill, discharge, leakage, contamination or storage of any Hazardous Substances whether or not such an event or condition required remediation, corrective action or other action, in order to comply with any Environmental Laws which are related to (i) the failure of SSRE or its agents, employees, contractors, subcontractors, licensees or invitees to comply with any of the Environmental Laws or Governmental Approvals from and after the Effective Date, (ii) Hazardous Substances on or about the Premises which are in any way caused by the acts or omissions of the SSRE's agents, employees contractors, subcontractors, licensees or invitees.
- b) Exceptions: Except to the extent covered by the environmental insurance obtained by SSRE pursuant to Section 13(d), SSRE shall have no obligation to defend, indemnify or save harmless Lessor for, from and against any and all claims (including, without limitation, attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines incurred pursuant to any Environmental Laws arising out of or related to (i) conditions caused or existing on the Premises prior to the Effective Date, whenever known or discovered, (ii) the failure of Lessor or its agents, employees, contractors, subcontractors, licensees or invitees to comply with any of the Environmental Laws, and (iii) Hazardous Substances that are present on the Property prior to the Effective Date or (iv) Hazardous Substances present at the Premises prior to the Effective Date.
- c) Lessor Indemnity. Lessor hereby agrees to indemnify, defend and hold harmless Lessee or its agents, employees, contractors, subcontractors, licensees or invitees for, from and against any and all Environmental Claims (including without limitation reasonable attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines incurred pursuant to any Environmental Laws) which may at any time be imposed upon or incurred by Lessee to the extent directly arising from or caused by (i) incidents occurring or conditions existing prior to the Effective Date, including those conditions known now or not presently known or (ii) the failure of Lessor or its agents, employees, contractors, subcontractors, licensees or invitees to comply with the Environmental Laws (other than such lack of compliance arising from the actions of Lessee, its agents, employees, contractors, subcontractors, licensees or

invitees). In the event Lessor is obligated to clean-up any conditions pursuant to this Section 11(c), Lessor shall be responsible for the costs of cleanup only to the extent such costs are not covered by the Environmental Insurance as hereafter provided, and Lessee shall cooperate with Lessor's efforts to clean up conditions pursuant to this Section 11(c). Lessor's indemnification under this paragraph shall expire two (2) years from Commercial Operation; provided, however, that notwithstanding the limitation on Lessor's indemnification, during the term of the Lease, Lessor shall be responsible for the cost of the deductible in connection with any claim under the Environmental Insurance policy as set forth in Section 13 (d) with respect to a claim arising out of an environmental condition that pre-dates the Effective Date. Lessor's payment of the deductible shall be a complete satisfaction of its liability and indemnification under this paragraph (c).

- d) Costs. Subject to the limitation set forth in paragraph (d) of this Section 11, the indemnifications by Lessor set forth in this section specifically include reasonable costs, expenses and fees incurred in connection with any clean-up, remedial, removal or restoration work required by any governmental authority. Notwithstanding any other provision hereof, in the event that a Hazardous Substance is discovered at the Premises that is caused by SSRE or its agents, employees, contractors, subcontractors, licensees or invitees, SSRE shall be solely responsible for all clean-up and other expenses, including without limitation moving any and all components of the System to the extent necessary to allow said cleanup, and then return, said components after completion of said cleanup.
- e) Survival. The provisions of this Section (other than those set forth in (c) above which expire as provided therein) will survive the expiration of this Lease.

12. Maintenance. The System shall be operated and maintained and, as necessary, repaired by SSRE at its sole cost and expense in accordance with the terms of this Lease, Applicable Law, good industry practice, and the requirements of any Governmental Authority and the Local Electric Utility, and any applicable manufacturer's warranties and instructions. Throughout the Lease Term, SSRE shall have the right, subject to the terms of this Lease and Applicable Laws: (i) to add to, remove or modify the System or any part thereof, and (ii) to perform (or cause to be performed) all tasks reasonably necessary to carry out the activities set forth in this Lease, including, but not limited to, the right to clean, repair, replace and dispose of all or a part of the System as SSRE in its reasonable discretion determines to be necessary, without prior notice to or consent of Lessor, and all at the sole cost and expense of SSRE, provided that before SSRE performs any material or substantial additions or modifications to the System other than the like-kind replacement of existing equipment, it shall provide Lessor with plans and specifications for such modifications for Lessor's approval, which shall not be unreasonably withheld, in the same manner as was required for the initial installation of the System under this Lease. SSRE shall install, implement and maintain all security measures required by applicable laws, and shall at least install a security fence adequate to restrict access to the System. SSRE shall coordinate its maintenance, repair and removal activities with Lessor's activities, if any, at the Premises, and shall, at all times, comply with Applicable Laws and not interfere with or disrupt Lessor activities required by this Lease. If Lessee damages the Premises or any other property of Lessor, SSRE shall promptly repair and restore the damaged areas or property at its sole cost and expense without any notice from Lessor.

13. Insurance. SSRE shall maintain the insurance coverages set forth in Exhibit E in full force and effect throughout the Lease Term, and any extension thereof and include the Lessor as an additional insured.

- a) Waiver of Subrogation. Lessee hereby waives any right of recovery against Lessor for injury or loss to personal property due to hazards covered by insurance obtained with respect to the Premises, including the improvements and installations thereon.
- b) All policies of insurance shall be issued by good, responsible companies qualified to do business in Rhode Island with a general policy holder's rating of at least A- and a financial rating of at least Class XII as rated in the most current available "A.M. Best's Key Rating Guide" and shall comport with all other requirements set forth on Exhibit E.
- c) System Loss. In the event of major physical harm to the System or Premises that was not a result, in whole or in part, of the fault of Lessee and, in the reasonable judgment of SSRE or its insurance carriers (i) results in total damage, destruction or loss of the System or Premises, (ii) the replacement or repair of the System or Premises would cost an amount such that it would not be economic or feasible to rebuild or (iii) repair of the Premises or System would take longer than 24 months ((i), (ii) and (iii) each referred to as a "System Loss"), SSRE shall, within thirty (30) business days following the occurrence of such System Loss, notify Lessor in writing whether or not SSRE intends, notwithstanding such System Loss, to repair or replace the System and to continue the Lease (in which case the rent shall be abated by an amount reasonably determined by Lessor). Alternatively, in the event that SSRE notifies Lessor that SSRE does not intend to repair or replace the System then the Lease will then terminate effective on the last day of the month in which SSRE has fully completed removal of the System and restoration of the Premises in accordance with Section 4 and Lessor will be entitled to keep the Security Deposit.
- d) Environmental Insurance. SSRE shall obtain the Environmental Insurance policy shown on Exhibit D.. If any claims are made under the Environment Insurance policy then any proceeds from such Environmental Insurance policy shall first be used towards claims arising out of the Premises and thereafter to any other claims. In the event of a claim under the Environment Insurance Policy based on an environmental condition that predates the Effective Date, Lessor shall be responsible for payment of the deductible. Lessor shall be named and additional insured on said policy. Subject to the immediately following sentence, Lessor and Lessee shall mutually select the contractor (which may be a contractor that is an affiliate of the Lessor) to perform any cleanup which said contractor may legally perform with full credit for the reasonable charge therefor against the policy deductible. The parties agree and acknowledge that the selection of said contractor shall be through a competitive bidding process at market pricing and subject to commercially reasonable terms.

14. Liability and Indemnity.

- a) Lessee Indemnity. In addition to Lessor's obligations under the Hazardous Substances section, Lessor shall indemnify, hold harmless, release and defend Lessee from and against all claims (i) arising directly or indirectly from the failure of Lessor to comply with the terms of this Lease or with any applicable laws, codes, bylaws, rules, orders, regulations, or lawful direction now or hereafter in force of any public authority applicable to the Premises (unless Lessor's compliance with such applicable laws etc. is precluded by the provisions of this Lease), and (ii) caused by or arising, directly or indirectly, from the act, omission, or negligence on the part of Lessor. However, in no

event shall Lessor be obligated to indemnify Lessee to the extent such claim, expense, or liability results from the act, omission, negligence or willful misconduct of Lessee.

- b) **Lessor Indemnity.** In addition to SSRE's obligations under the Hazardous Substances section, SSRE shall indemnify, hold harmless, release and defend Lessor from and against all claims (i) arising directly or indirectly from the failure of Lessee to comply with the terms of this Lease or with any applicable laws, codes, bylaws, rules, orders, regulations, or lawful direction now or hereafter in force of any public authority, and (ii) caused by or arising, directly or indirectly, from the act, omission, or negligence on the part of Lessee, and (iii) arising in any way out of Lessee's occupation and use of the Property including but not limited to construction, operation and maintenance of the System. However, in no event shall Lessee be obligated to indemnify Lessor to the extent such claim, expense, or liability results from the act, omission, negligence or willful misconduct of Lessor.
- c) **Co-Lessee Indemnity.** SSRE shall indemnify, hold harmless, release and defend Co-Lessee from and against all claims arising out of or related to this Lease, except to extent such claim results from the act, omission, negligence or willful misconduct of Co-Lessee.
- d) **Limitation of Liability.** Notwithstanding anything to the contrary in this Lease, neither Lessor nor Lessee shall in any event be liable for any punitive or special damages.
- e) **Survival.** The provisions of this Section shall survive termination or expiration of this Lease.

15. Intentionally omitted.

16. **Condemnation.** In the event the Premises is transferred to a condemning authority pursuant to a taking of all or a portion of the Premises sufficient in SSRE's reasonable determination to render the Premises demonstrably unsuitable for SSRE's use, SSRE shall have the right to terminate this Lease immediately upon written notice to Lessor. Sale to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation. In the event of an award related to eminent domain or condemnation of all or part of the Premises and any portion of such amount is expressly allocated for the value of the System, moving expenses, business loss and/or business dislocation expenses then SSRE shall be entitled to take such amounts as allowed by law; provided however Lessor shall always be entitled to such portions of the award allocable to the fee estate and Lessor's interest in this Lease.

17. Assignment; Change of Control; Power of Attorney.

- a) **Assignment.** This Lease and Security Interest may be assigned by SSRE on Lessee's behalf upon the written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed *provided however*, that SSRE may assign this Lease and Security Interest on Lessee's behalf without Lessor's consent (i) as collateral for financing necessary for the construction, operation and/or maintenance of the System; (ii) in connection with any merger, consolidation or sale of substantially all of the assets or equity interests of SSRE, and/or (iii) to an affiliate of SSRE. Upon the request of SSRE or its Lender, the Lessor shall execute an estoppel certificate in a form reasonably requested by SSRE or Lenders similar to the form attached hereto as Exhibit F or Exhibit G (as applicable). After providing prior written notice to Lessee, this Lease may

be assigned by Lessor in his discretion to a holding entity owned and controlled by Lessor.

- b) Successors and Assigns. Subject to the foregoing limitations, the provisions of this Lease shall bind, apply to and inure to the benefit of, the Parties and their heirs, successors and assigns.
- c) Change of Control. In the event of a Change in Control of Lessor, upon the reasonable request of Lessee or its Lenders, the Lessor shall execute an estoppel agreement in a form reasonably requested by Lessee or its Lenders.
- d) Power of Attorney. In connection with any financing necessary for the construction, operation or maintenance of the System, the Co-Lessee hereby grants SSRE power of attorney solely for the limited purpose of executing a collateral assignment of this Lease and/or a leasehold mortgage in connection with said financing. Notwithstanding its status as Co-Lessee hereunder, SSRE agree and acknowledge that Co-Lessee is not and shall not be a party to and shall not owe any amounts in connection with such financing.

18. Defaults and Remedies

- a) Lessee Default Defined. The following events shall be defaults of this Lease by Lessee (“Lessee Defaults”):
 - i. If Lessee breaches any material term of this Lease (other than as set forth in clauses (ii)-(iv), below), and (a) if such breach can be cured within thirty (30) days after Lessor’s notice of such breach and SSRE fails to cure within such thirty (30) day period, or if such breach cannot reasonably be cured within such thirty (30) day period despite SSRE’s prompt commencement and diligent pursuit of a cure, or (b) if SSRE fails to promptly commence and diligently pursue and complete said cure within a reasonable period of time if a cure period longer than thirty (30) days is needed, provided that no cure period shall exceed ninety (90) days;
 - ii. SSRE fails to make any payments to Lessor required by this Lease, and such failure is not cured within fifteen (15) calendar days, except that if such failure occurs more than three times in any 365-day period, such occurrence shall constitute a Lessee Default irrespective of whether one or more of such failures have been cured within the period stated in this clause;
 - iii. Subject to any rights of the Lender pursuant to Section 37 below, SSRE becomes Bankrupt;
 - iv. SSRE fails to obtain any bonds and insurance required by this Lease, unless such failure is cured within fifteen (15) days, provided also that no harm to Lessor has occurred during the period of such failure.
- b) Lessor Default Defined. The following events shall be defaults with respect to Lessor (each, a “Lessor Default”):
 - i. Lessor fails to pay SSRE any amount due SSRE within thirty (30) days from

receipt of written notice from SSRE of such past due amount; and

- ii. Lessor breaches any material term of this Lease if (a) such breach can be cured within thirty (30) days after SSRE's notice of such breach and Lessor fails to so cure, or (b) Lessor fails to commence and diligently pursue and complete said cure within a reasonable period of time if a cure period longer than thirty (30) days is needed, provided that no cure period shall exceed ninety (90) days;
- c) Remedies. If an Event of Default has occurred and is not cured within the cure period provided for, if any, subject to the rights of any Lender pursuant to Section 37, the non-defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity (including without limitation any rights as a secured party under the UCC, if applicable), including damages, specific performance and/or the right to terminate the Lease upon notice to the defaulting party without penalty, all of which remedies shall be cumulative. For the avoidance of doubt, any Lessee Default shall be subject to any applicable rights to cure of any Lender.
 - i. If Lessor shall default in the performance or observance of any agreement or condition in this Lease contained on Lessor's part to be performed or observed, and shall not cure such default within thirty (30) days after notice thereof (or if such default cannot reasonably be cured within thirty (30) days, if Lessor shall not within said period commence to cure such default and thereafter proceed to cure such default to completion with due diligence), unless a different notice period is elsewhere provide in this Lease, SSRE may, at SSRE's option, without waiving any claim for damage, or any other right or remedy of SSRE, in law or in equity, at any time thereafter, give written notice to Lessor that if such cure is not commenced within two (2) days and thereafter diligently prosecuted to completion, SSRE will cure such default for the account of Lessor, and any reasonable amount paid or any reasonably contractual liability incurred by SSRE in so doing shall be deemed paid or incurred for the account of the Lessor and Lessor agrees to reimburse SSRE therefor or to save SSRE harmless therefrom; provided, that SSRE may cure any such default as aforesaid, prior to the expiration of any waiting period, as is reasonably necessary to protect the Premises or SSRE's interest therein or to prevent injury or damage likely to result to persons or property. If Lessor shall fail to reimburse SSRE within five (5) days of demand therefor, SSRE may deduct any amount paid or contractual liability incurred, together with interest thereon at the rate of ten (10%) percent per annum from Base Rent otherwise payable, or any other sums due or to become due to Lessor from time to time hereunder.
 - ii. If Lessee shall default in the performance or observance of any agreement or condition in this Lease contained on Lessee's part to be performed or observed, and shall not cure such default within thirty (30) days after notice thereof (or if such default cannot reasonably be cured within thirty (30) days, if Lessee shall not within said period commence to cure such default and thereafter proceed to cure such default to completion with due diligence), unless a shorter notice period is elsewhere provide in this Lease, Lessor may, at Lessor's option, without waiving any claim for damage, or any other right or remedy of Lessor, in law or in equity, at any time thereafter, give written notice to Lessee that if such cure is not commenced within two (2) days and thereafter diligently prosecuted to completion, Lessor will cure such default for the account of Lessee, and any

amount paid or any contractual liability incurred by Lessor in so doing shall be deemed paid or incurred for the account of the Lessee and Lessee agrees to reimburse Lessor therefor or to save Lessor harmless therefrom; provided, that Lessor may cure any such default as aforesaid, prior to the expiration of any waiting period, as is reasonably necessary to protect the Premises or Lessor's interest therein or to prevent injury or damage likely to result to persons or property. If Lessee shall fail to reimburse Lessor within five (5) days of demand therefor, Lessor may collect same as Additional Rent, together with interest thereon at the rate of ten (10%).

- iii. In the event that Lessee terminates this Lease because of Lessor's default hereunder, Lessee's obligation to pay any further Rent shall cease, Lessor shall repay Lessee any prepaid rent paid pursuant to this Lease, and Lessee shall have the right to pursue any and all remedies available to it at law and/or equity. Lessor agrees to reimburse Lessee for all costs associated with the enforcement of Lessee's rights under this Lease, or any and all provisions therein, including but not limited to legal and court costs. Without limiting any of the Lessee's rights and remedies hereunder, and in addition to all other amounts Lessor is otherwise obligated to pay, it is expressly agreed that Lessee shall be entitled to recover from Lessor all costs and expenses, including reasonable attorneys' fees, incurred by Lessee in enforcing this Lease from and after Lessor's default, and Lessee shall have right to pursue any and all remedies available to it at law and/or equity.
- iv. In the event that Lessor terminates this Lease because of Lessee's default hereunder, Lessor shall have the right to declare the term of this Lease ended and the System along with Lessee's other effects on the Premises shall be removed consistent with the provision of this Lease. Lessee agrees to reimburse Lessor for all costs associated with the enforcement of Lessor's rights under this Lease, or any and all provisions therein, including but not limited to legal and court costs. Without limiting any of the Lessor's rights and remedies hereunder (which rights and remedies include, without limitation, the right to retain the Deposit), and in addition to all other amounts Lessee is otherwise obligated to pay, it is expressly agreed that Lessor shall be entitled to recover from Lessee all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in enforcing this Lease from and after Lessee's default.

19. Notices. All Notices under this Lease shall be made in writing to the Addresses and Persons specified below. Notices shall be delivered by hand delivery, regular overnight delivery service, sent by registered or certified mail, postage prepaid, return receipt requested; by facsimile to the address set forth below; by email with confirmation of receipt or such other address as the Party shall designate by written notice in the manner set forth herein and shall be deemed received upon the earlier of the (i) if mailed, two (2) business days after posting by a United States Post Office; (ii) if personally delivered, the date of delivery to the address of the person to receive such notice; (iii) if sent by courier service, two (2) business days after delivery to such courier service; (iv) if given by facsimile or email, shall require electronic confirmation of receipt, provided that a facsimile or email, that is transmitted after normal business hours of the recipient shall be deemed effective on the next business day. All electronic notices transmitted by email shall be deemed effective upon receipt by the sender of a specific acknowledgement by the recipient (automatic responses not being sufficient for acknowledgement). Rejection or refusal to accept delivery of any notice shall be deemed to be

the equivalent of receipt of any notice given hereunder. A Party may change its address by providing notice of the same in accordance with the provisions of this Section. Failure to comply strictly with the terms of this provision shall not be held against the Party claiming to have given notice so long as such Party substantially complied with this provision, the receiving Party received the notice in question, and such failure has not materially prejudiced the receiving Party.

To Lessee: Southern Sky Renewable Energy RI-Natick Ave Cranston, LLC
Attn: Ralph A. Palumbo, President
117 Metro Center Blvd – Suite 1007
Warwick, RI 02886
Email: Ralph@southernskyre.com

with a copy to: Duffy & Sweeney Ltd.
1800 Financial Plaza
Providence, RI 02903
Attention: Joshua Celeste, Esquire
Email: jceleste@duffysweeney.com

To Co-Lessee (PENMFA Counterparty)

with a copy to:

To Lessor: Ronald Rossi, Manager
Natick Hill Farm, LLC
1936 Phenix Avenue
Cranston, RI 02921

with a Copy to: David H. Ferrara, Esq.
Taft & McSally, LLP
21 Garden City Drive
Cranston, RI 02920
dferrara@taftmcsally.com

20. Waiver. 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.
21. Remedies Cumulative. No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law or in equity or by statute provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

22. Headings. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.
23. Survival. The expiration or earlier termination of this Lease shall not relieve the Parties of duties or liabilities that by their nature should survive such expiration or termination, prior to the term of the applicable statute of limitations.
24. Governing Law. This Lease is made and entered into and shall be interpreted in accordance with the applicable laws of Rhode Island. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of Rhode Island or the federal district court sitting in Providence, which shall have exclusive jurisdiction thereof.
25. Severability. Subject to the other terms of this Lease, any term, covenant or condition in this Lease that to any extent is invalid or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective and severable from the rest of this Lease to the extent of such invalidity or prohibition, without impairing or affecting in any way the validity of any other provision of this Lease, or of such provision in other jurisdictions.
26. Binding Effect. This Lease and its rights, privileges, duties and obligations shall bind and inure to the benefit of and be binding upon each of the Parties hereto, together with their respective heirs, personal representatives, successors and permitted assigns.
27. Counterparts. This Lease may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
28. Facsimile Delivery. This Lease may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party shall have the full force and effect as an original signature.
29. Entire Lease. This Lease represents the full and complete agreement between the Parties hereto with respect to the lease of the Premises and supersedes all prior written or oral negotiations, representations, communications and agreements between said parties with respect to the lease of the Premises to Lessee. This Lease may be amended only in writing signed by both Lessee and Lessor or their respective successors in interest. Lessor and Lessee each acknowledge that in executing this Lease that party has not relied on any verbal or written understanding, promise, or representation which does not appear in this document.
30. Force Majeure. A "Force Majeure Event" means any cause(s) which render(s) a Party wholly or partly unable to perform its obligations under this Lease (other than obligations to make payments when due), and which are neither reasonably within the control of such Party nor the result of the fault or negligence of such Party, and which occur despite all reasonable attempts to avoid, mitigate or remedy, and shall include acts of God, war, riots, civil insurrections, cyclones, hurricanes, floods, fires, explosions, earthquakes, lightning, storms, chemical contamination, epidemics or plagues, acts or campaigns of terrorism or sabotage, blockades, embargoes, accidents or interruptions to transportation, trade restrictions, acts of any Governmental Authority after the date of this Lease, strikes and other labor difficulties, and other similar events or circumstances beyond the reasonable control of such Party. A Party claiming a Force Majeure Event shall not be considered in breach of this Lease or liable for any delay or failure to comply with the Lease, if and to the extent that such delay or failure is attributable to the occurrence of such Force Majeure Event; *provided that* the Party claiming relief shall promptly notify the other Party in writing of the existence of the Force Majeure

Event, exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, and resume performance of its obligations hereunder as soon as practicable thereafter. If a Force Majeure Event shall have occurred that has materially affected either Party's ability to perform its obligations hereunder and that has continued for a continuous period of one hundred twenty days (120) and performance of its obligations will be impossible, illegal or impracticable after an additional period of one-hundred twenty (120) days, then the other Party shall be entitled to terminate the Lease upon ten (10) days' prior written notice. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other, except for SSRE's obligation to remove the System in accordance with the terms of this Lease and any such liabilities that have accrued prior to such termination.

31. No Brokers. Lessor and Lessee hereby represent and warrant to the other that no real estate broker or agent is entitled to a commission in connection with this Lease. In the event any broker or other party claims a commission, the party responsible for the contact with that claimant shall indemnify, defend and hold the other party harmless from that claim, including, without limitation, the payment of any attorneys' fees and costs incurred.
32. No Partnership. This Lease is not intended and shall not be construed to create any partnership or joint venture or any other relationship other than one of 'lessor' and 'lessee,' and neither Party shall be deemed the agent of the other Party nor have the authority to act as agent for the other Party.
33. No Intended Third Party Beneficiary. There are no intended third-party beneficiaries to this Lease.
34. Subordination to Existing Leases, Easements and Rights of Way. Lessee acknowledges and understands that, notwithstanding anything to the contrary in this Lease, this Lease and all rights of Lessee hereunder are subject and subordinate to all existing easements, rights of way, declarations, restrictions and all other matters of record. Lessor reserves the right to grant additional leases, easements, or rights of way, whether recorded or unrecorded, as may be necessary, subject to Lessee's right of quiet enjoyment under Section 9(a), provided, however, that, notwithstanding anything to the contrary in this Lease, Lessor may continue to undertake Lessor activities required by this Lease, and do all such things as may be required by Applicable Laws and any Governmental Authority.
35. Further Assurances. Upon 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 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.
36. No Merger. So long as any of the indebtedness under any Loan shall remain unpaid or unperformed, unless Lender shall otherwise consent in writing, the fee title and the leasehold estates on the Premises shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Lessee or in any lessee or in any third party by purchase or otherwise.
37. Lender Provisions. Any Person or entity that holds or is the beneficiary of a first position mortgage, deed of trust or other security interest in this Lease or in any System located on the Premises (any such first position mortgage, deed of trust or other security interest is referred to herein as a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in

existence and until the lien thereof has been extinguished, be entitled to the protections set forth herein. No Leasehold Mortgage shall encumber or affect in any way the interest of Lessor or Lessor's fee interest in and to the Property and Premises, or Lessor's rights under this Lease.

- a) Lender's Right to Possession, Right to Acquire and Right to Assign. Pursuant to the provisions of this section, a Lender shall have the right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the leasehold estate by any lawful means; (iii) to take possession of and operate the System or any portion thereof and to perform all obligations to be performed by SSRE hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Lease; (iv) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure; and (v) to sell the System and rights under the Public Entity Net Metering Credit Arrangement and any other contracts dealing with the sale of net energy or renewable energy certificates from the System to a third party. Lessor's consent shall not be required for the Lender's acquisition of the encumbered leasehold estate created by this Lease, whether by foreclosure or assignment in lieu of foreclosure.
- b) Upon the Lender's acquisition of the leasehold estate, whether by foreclosure or assignment in lieu of foreclosure, Lender shall have the right to sell or assign said acquired leasehold estate, provided Lender and proposed assignee (as applicable) shall first satisfy each of the following conditions: (i) any such assignee shall be approved in advance by Lessor, such approval not to be unreasonably conditioned, withheld or delayed; (ii) any such assignee shall assume all of SSRE's obligations under this Lease; (iii) Lender and/or any proposed assignee shall have satisfied every obligation of Lessee existing under this Lease but which remains unsatisfied at the time of the proposed assignment; and (iv) Lender and any such assignee shall satisfy all applicable legal requirements.
- c) Notice of Default; Opportunity to Cure. The Lender shall be entitled to receive notice of any default by SSRE, provided that such Lender shall have first delivered to Lessor a notice of its interest in the Leasehold Mortgage in the form and manner, if any, provided by applicable state laws, rules, regulations, and the provisions of this Lease. If any notice shall be given of the default of SSRE and SSRE has failed to cure or commence to cure such default within the cure period provided in this Lease, then any such Lender, which has given notice as above provided, shall be entitled to receive an additional notice that SSRE has failed to cure such default and such Lender shall have ninety (90) days after such additional notice to cure any such default or, if such default cannot be cured within ninety (90) days, to diligently commence curing within such time and diligently pursue such cure to completion within such time as SSRE would have been allowed pursuant to the terms of this Lease but as measured from the date of such additional notice; provided however, with respect to any default relating to the payment of Rent or other sum due from Lessee to Lessor hereunder the Lenders shall have only thirty (30) days to cure such default, and only one such additional notice need be provided to Lender in any 12 month period. The Lender may take possession of the Premises and the System, and operate the System if necessary, pursuant to the terms of this Lease.
- d) Cross-Default/Cross-Collateralization. The Leasehold Mortgage shall not contain any cross-collateralization or cross-default provisions relating to other loans of SSRE (or any

subsidiary or affiliate of SSRE) that are not incurred for the ownership, construction, maintenance, operation, repair or financing of the System.

- e) **Priority in Payment.** The Lessor hereby agrees that in the event of (a) an entry by the Lender to foreclose any Leasehold Mortgage provided to Lender by Lessee, (b) any exercise of Lender's rights to seize control of the System, or any portion thereof, or (c) the System otherwise becomes subject to the ownership or control of the Lender, that the right of possession of the Lessee to the Premises and the Lessee's rights arising out of this Lease shall not be terminated by such foreclosure or enforcement of Lender's rights and agrees further that the Lessee shall peaceably hold and enjoy the Premises for the remainder of the unexpired term of the Lease, including all extensions and renewals thereof, upon the same terms, covenants and conditions as are set forth in the Lease and without any hindrance or interruption from the Lessor so long as the Lessee shall not be in default with respect to any of the terms, covenants or conditions of the Lease to be performed or observed by the Lessee. As to any amounts owed by SSRE to the Lessor and the Lender, the Lessor and the Lender's relative priority shall be as set forth under applicable law. Lessor acknowledges and agrees that it has no security interest in and to the System.
- 38. **No Recourse.** Lessee specifically agrees to look solely to Lessor's interest in the Premises for the recovery of any judgments from Lessor. Lessor will not be personally liable for any such judgments. Notwithstanding the foregoing two sentences, in the event by encumbering the Lessor's interest in the Premises the equity value of Lessor's interest in the Premises at any point in time falls below 40% of the fair market value of the Premises, then the first two sentences of this Section 38 shall be deemed void *ab initio*. The provisions contained in the preceding sentences are not intended to, and will not, limit any right that Lessee might otherwise have to obtain injunctive relief against Lessor or relief in any suit or action in connection with enforcement or collection of amounts which may become owing or payable under or on account of insurance maintained by Lessor.
- 39. **Memorandum of Lease.** Neither Lessor nor SSRE shall record this Lease. Lessor agrees, upon SSRE's request at any time following the Effective Date, to execute a Memorandum of Lease in the form attached as Exhibit H and SSRE may then record the Memorandum of Lease at its expense. The Memorandum of Lease is subject to all of the terms, conditions and understandings set forth in this Lease. In the event of a conflict between the terms and conditions of the Memorandum of Lease and the terms and conditions of this Lease, the terms and conditions of this Lease shall prevail.

[REMAINDER OF PAGE LEFT BLANK SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Lease on the date first above written.

LESSOR:

NATICK HILL FARM, LLC

By: _____
Ronald Rossi, Manager

STATE OF _____
COUNTY OF _____

In _____ on this _____ day of _____, 2019, before me personally appeared Ronald Rossi, as Manager of Natick Hill Farm, LLC who proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, or personal knowledge of the undersigned, to be the party executing the foregoing instrument and he acknowledged said instrument, by him executed to be his free act and deed, his free act and deed in said capacity and the free act and deed of Natick Hill Farm, LLC.

Notary Public
Printed Name: _____
My Commission Expires: _____

[Affix Notary Seal]

LESSEES:

SOUTHERN SKY RENEWABLE ENERGY
RI-NATICK AVE-CRANSTON, LLC

By: _____
Ralph A. Palumbo
Title: Manager

STATE OF _____
COUNTY OF _____

In _____ on this _____ day of _____, 2019, before me personally appeared Ralph A. Palumbo, as Manager of Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC who proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, or personal knowledge of the undersigned, to be the party executing the foregoing instrument and he acknowledged said instrument, by him executed to be his free act and deed, his free act and deed in said capacity and the free act and deed of Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC.

Notary Public
Printed Name: _____
My Commission Expires: _____

[Affix Notary Seal]

CO-LESSEE:

By: _____
Print Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

In _____ on this _____ day of _____, 2017, before me personally appeared _____, as _____ (title) on behalf of the who proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, or personal knowledge of the undersigned, to be the party executing the foregoing instrument and he/she acknowledged said instrument, by him/her executed to be his/her free act and deed, his/her free act and deed in said capacity and the free act and deed of the.

Notary Public
Printed Name: _____
My Commission Expires: _____

[Affix Notary Seal]

EXHIBIT A

THE PROPERTY

[SEE ATTACHED]

Subject to easements, rights of way and agreements recorded at Book 735 Page 692, Book 739 Page 762, Book 752 page 837, Book 752 Page 839, Book 358 Page 452 and Book 3126 Page 291.

EXHIBIT B

PREMISES

[SEE ATTACHED]

Subject to easements and restriction of record.

EXHIBIT B1

SITE PLAN

[SEE ATTACHED]

EXHIBIT C
DEFINITIONS

“Additional Rent” has the meaning set forth in Section 2(d).

“Affiliate” means, with respect to any Person, the Person’s authorized representatives, agents, employees, managers, contractors, officers, directors, partners, members, managers, and any other Person directly controlling, controlled by or under common control with such first Person.

“Applicable Law” means any and all applicable constitutional provisions, laws, statutes, rules, regulations, ordinances, bylaws, treaties, orders, decrees, judgments, decisions, certificates, holdings, injunctions, registrations, licenses, franchises, permits, authorizations, guidelines, Governmental Approvals, the Net Metering Rules, and any and all approvals, consents or requirements of any Governmental Authority having jurisdiction, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Bankrupt” means that if SSRE or Lessor (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent; (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 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 which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Base Rent” has the meaning set forth in Section 2(b).

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Providence, Rhode Island are required or authorized by Applicable Law to be closed for business.

“Change of Control” means the sale of all or substantially all the assets of a Party; any merger consolidation or acquisition of a Party with, by or into another corporation, entity or person, or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a Party in one or more related transactions.

“Commercial Operations,” with respect to a System, means that the System has been installed on the Premises, is ready for regular, daily operation, has been interconnected to the Local Electric Utility, SSRE has received a Permission to Operate notice from the Local Electric Utility, and the System is actually operational and producing output.

“Commercial Operations Date” means the date on which the System reaches Commercial Operation.

“Construction Commencement” means the date on which SSRE or any of its agents performs any site work that involves any substantial change to the Premises or its earth.

“Effective Date” has the meaning set forth in the preamble of the Lease

“Environmental Attributes” means all products of the System including but not limited to carbon trading credits, solar renewable energy certificate (“SRECs”), renewable energy credits or certificates, emissions reduction credits, investment credits, tax credits, emissions allowances, green tags, tradable renewable credits and Green-e® products, but not including grants or benefits for which only a governmental entity is eligible as determined by and under Applicable Law.

“Environmental Claims” means any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that any Party may suffer or incur due to the existence of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that relate to or arise from such Party’s activities on the Property.

“Environmental Insurance” shall have the meaning set forth on Exhibit E.

“Environmental Law” means and includes, without limitation, any present or future federal, state or local law, whether under common law, statute, rule, regulation or otherwise, requirements under Permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directive or other requirements of any Governmental Authority relating to or imposing liability or standards of conduct, disclosure or notification with regard to the protection of human health, the environment, ecological conditions, Hazardous Substances or any activity involving Hazardous Substances. Environmental Law is a part of Applicable Law.

“Event of Default” means either a Lessee Default or Lessor Default.

“Expiration Date” shall have the meaning set forth in Section 3(b).

“First Option Term” shall have the meaning set forth in Section 2(f).

“Force Majeure Event” has the meaning set forth in Section 30 of this Lease.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license or authorization issued by or on behalf of, or required to be issued by or on behalf of, any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, including, without limitation, the Rhode Island Department of Environmental Management.

“Governmental Charges” means all applicable federal, state and local taxes (including, without limitation, real and personal property taxes, sales, use, gross receipts or similar taxes), governmental charges, costs, expenses, charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, the Local Electric Utility or other similar entity, on or with respect to the System, Premises, and this Lease.

“Hazardous Substances” means and includes, without limitation, any substance, chemical, material, pollutant, or waste: (i) the presence of which causes a nuisance or trespass of any kind under any applicable Environmental Law; (ii) which is regulated by any Governmental Authority; (iii) is likely to create liability under any Environmental Law because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including but not limited to, flammables and explosives, gasoline, petroleum and petroleum products, asbestos containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, microbial matter, biological toxins, mycotoxins, mold or mold spores or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such by any Governmental Authority; or (iv) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law.

“Lease Term” means the date beginning on the earlier of the Commercial Operations Date or May 1, 2019 and ending on either (i) the twenty-fifth anniversary of the Commercial Operations Date, (ii) if the First Option Term is exercised then the thirtieth anniversary of the Commercial Operations Date, or (iii) if the Second Option Term is exercised then the thirty-fifth anniversary of the Commercial Operations Date.

“Leasehold Mortgage” shall have the meaning set forth in Section 37.

“Lender” means any third-party entity providing financing to Lessee relating to the purchase, construction or installation of the System. It shall not mean Lessee’s trade creditors.

“Lessee” shall have the meaning set forth in the opening paragraph of this Lease.

“Lessor” shall have the meaning set forth in the opening paragraph of this Lease.

“Lessor’s Knowledge” means the actual knowledge of Ronald Rossi or any other of Lessor’s affiliates.

“Local Electric Utility” means NGrid or National Grid, the local electric distribution company providing interconnection and/or net metering services for the System.

“Permitted Use” has the meaning set forth in Section 1(b).

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

“PENMFA” means that certain Public Entity Net Metering Credit Arrangement, by and between

Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC and PENMFA Counterparty, dated as of _____, as may be amended or assigned.

“Pre-Commercial Operations Term” means the period commencing on the Effective Date, and continuing until the earlier of October 31, 2019 or the first day of the month following the date that the System has been commissioned and achieved Commercial Operations.

“Removal Escrow” has the meaning set forth in Section 4.

“Removal and Restoration Date” means the date not be later than ninety (90) days after the expiration or earlier termination of this Lease, by which Lessee shall complete removal from the Premises of the System and all of Lessee’s property, including, but not limited to, all equipment and components comprising the System, pursuant to Section 4.

“Removal and Restoration Period” means the period of time beginning with the Expiration Date and ending on the Removal and Restoration Date.

“Second Option Term” shall have the meaning set forth in Section 2(g).

“Security Deposit” shall have the meaning set forth in Section 2(e).

“System” or “Systems” means a solar photovoltaic facility having a nameplate capacity of approximately 9.0 MW DC to be installed by Lessee on the Premises, subject to the terms of this Lease, which facility shall include but not necessarily be limited to an integrated assembly of solar photovoltaic panels, mounting assemblies, inverters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring and interconnections with the Local Electric Utility.

“Tax Ordinance” means that certain Ordinance of the City Council of the City of Cranston No, 2017-11, passed April 24, 2017 and approved May 2, 2017 relating to Commercial Renewable Energy Systems Tangible and Real Estate Tax Values; as the same may be amended from time to time

“Tests” has the meaning set forth in Section 7.

EXHIBIT D
ENVIRONMENTAL INSURANCE

[SEE ATTACHED]

EXHIBIT E
LESSEE INSURANCE

SSRE shall maintain the following insurance coverages, as a condition of the Lease, in full force and effect throughout the Lease Term and without interruption either through insurance policies, or acceptable self-insured programs, failing which SSRE shall be deemed in material breach of the Lease:

- (i) **Workers' Compensation** at statutory limits and Employer's Liability Coverage in accordance with the Worker's Compensation Act of state of Rhode Island, which policy shall adequately protect all labor employed by the Lessee during the life of this Lease. Such insurance shall be of at least \$1,000,000.00 each occurrence.
- (ii) **Commercial General Liability Coverage** (Occurrence Form) with limits of not less than \$5,000,000.00 each occurrence, on which policy Lessor shall be added as an additional insured, and
- (iii) **Property Coverage** for materials and supplies being transported by the contractor.
- (iv) **Improvements and Lessee's Personal Property.** A "special form" or "all risk" insurance policy or policies insuring all Improvements and Excluded Personal Property from time to time in, on, or upon the Premises, against loss or damage by fire, lightning and other risks from time to time included under such "all risk" policies, including but not limited to insurance against fire, sprinkler leakage, vandalism and malicious mischief, in amounts not less than the full replacement value thereof as from time to time determined (but not less frequently than every 3 years).
- (v) **Builder's Risk.** Builder's risk property coverage in an amount equal to the full replacement cost value of the Project. This insurance shall include the interest of Lessee and its contractor and shall provide all-risk coverage against loss by physical damage, including without limitation or duplication of coverage, fire, extended coverage, theft, vandalism and malicious mischief, as well as the extended coverage described herein with respect to the completed improvements. Lessee shall also at its cost maintain business interruption insurance providing coverage for a period of not less than twelve (12) months if the Improvements are destroyed or rendered inaccessible by a risk insured against by a policy of special form or all-risk insurance, with any endorsements required to satisfy this Section. All proceeds from the policy Lessee is required to maintain pursuant to this Section 10.03(b) shall be used for the repair or replacement of the property damaged or destroyed unless this Lease shall cease and terminate.
- (vi) **Environmental Insurance.** An environmental insurance policy, including Lessor as additional insured, for a period beginning from Construction Commencement and lasting for a period of not less than 3 years following the Commercial Operation Date covering costs associated with clean-up and removal of any environmental conditions or Hazardous Substances on the Property as attached on Exhibit D (the "Environmental Insurance").

For any claims resulting from the operation, maintenance, and/or repair of the System, SSRE's insurance coverage shall be primary. Any insurance or self-insurance maintained by Lessor shall be in excess of Lessee's insurance and shall not contribute with it.

EXHIBIT F

LESSOR CONSENT AND ESTOPPEL CERTIFICATE

(SOLAR GROUND LEASE AGREEMENT)

To: [Insert Lender Info]
and

Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC
Ralph A. Palumbo, President
117 Metro Center Boulevard-Suite 2007
Warwick, Rhode Island 02886

Co-Lessee

Date: _____

Re: _____ Solar Ground Lease Dated: [Insert]
Date](the “Lease”)

Lessee: Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC, a Rhode Island limited liability company (“SSRE”) and _____ (“Co-Lessee”) (together “Lessee”)

Lessor: _____ (“Lessor”)

Premises: Certain property located in the City of Cranston, Providence County, Rhode Island, as more specifically described in Exhibits A to the Lease (the “Premises”)

Lessor acknowledges that it has been advised that (a) [Insert Lender Name] a [Insert State] limited liability company (“Lender”) has agreed, subject to the satisfaction of certain terms and conditions, to make a loan (the “Loan”) to SSRE to finance, in part, the development, construction and operation of a solar energy project (the “Project”) on the Premises, and Lender is requiring this Lessor Consent and Estoppel Certificate (this “Consent”) as a condition to its making the Loan. Upon the repayment of the Loan, this Consent will terminate. Accordingly, Lessor hereby confirms to Lender and acknowledges and agrees as follows:

1. Lessor hereby consents to the making of the Loan to SSRE and to granting of security interests, including without limitation, (i) an Assignment of Agreements (the “Assignment”) pursuant to which Lessee shall collaterally assign its right, title and interest in and to the Lease for the benefit of Lender, its successors and assigns, and (ii) a leasehold mortgage by Lessee in favor of Lender (the “Mortgage”), to be recorded with the Providence County land registry.
2. Lessor acknowledges and agrees that the Premises consists of the land described as the “Premises” in ExhibitB to the Lease.

3. Lessee has the right to occupy and use the Premises as set forth in the Lease.
4. The Premises is available for the use of Lessee under the terms of the Lease. All duties or obligations of Lessor required under the Lease which were an inducement to Lessee to enter into the Lease have been fully performed.
5. The Lease is in full force and effect. No default exists on the part of Lessor or, to the actual knowledge of Lessor, on the part of Lessee under the Lease, nor, to the actual knowledge of Lessor, does any circumstance currently exist that, but for the giving of notice or the passage of time, or both, would be such a default. The Lease constitutes the entire agreement between Lessor and Lessee with respect to the use of the Premises by Lessee and has not been amended, modified or supplemented, except as attached hereto, and has not been superseded. There are no oral agreements between Lessor and Lessee with respect to the Premises. A true and correct copy of the Lease (including all amendments thereto) is attached to this Consent as Exhibit 1. Lessor agrees not to amend or modify the Lease without the prior written consent of Lender. Lessor agrees to provide Lender copies of any and all notices concerning a default by Lessee under the Lease. Such notices shall be sent to Lender at the above-referenced address (or such other address as Lender may designate).
6. In the event of a default on the part of Lessee under the Lease, Lessor agrees that it shall accept a cure made on Lessee's behalf by Lender. Lessor further agrees that notwithstanding the terms of the Lease, in the event Lessee defaults under the Lease and such default cannot be reasonably cured within the time frames set forth in Lease, then Lender shall have such additional time, but in no event longer than ninety (90) days, to cure the default, provided that it commences in good faith to cure the default within such thirty (30) day period, and it diligently and continuously pursues such cure.
7. Lessor agrees that upon an event of default by Lessee under the Lease, provided that such defaults have been cured by Lessee or that Lender has agreed to cure any such default, subject to the terms of Section 13 below, and Lender has given notice to Lessor of its intent to assume the rights and obligations of Lessee under the Lease, Lessor shall amend the Lease, if directed in writing by Lender, to recognize Lender, its successor and assigns, as the successor Lessee thereunder.
8. Lessor has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of Lessee's interest in the Lease.
9. No actions, whether voluntary or involuntary, are pending against Lessor under any bankruptcy, insolvency or similar laws of the United States or any state thereof.
10. The term of the Lease commenced on [Insert Date] and ends on the date that is [insert lease term] () years from the commercial operation date of the Project, subject to two (2) five (5) year renewal periods.
11. The current annual rental payable by SSRE under the Lease is at the rates and subject to the terms and conditions of the Lease.

12. Lessor acknowledges and agrees that Lessee, its agents, invitees, guests, employees, and suppliers have a non-exclusive right of ingress to and egress from the Premises, as set forth in the Lease.
13. Lessor hereby agrees with Lender that, in the event Lender or another succeeding Lessee becomes Lessee under and pursuant to the requirement of the Lease, including but not limited to the requirements relating to Assignment, (the "Succeeding Lessee"), so long as such Succeeding Lessee complies with and performs its obligations under the Lease, Lessor shall recognize such Succeeding Lessee as Lessee under the Lease and the Lease shall continue in full force and effect, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease, and Lessor shall not disturb the possession of such Succeeding Lessee; provided, however, Lender shall not have any liability or obligation under the Lease solely as a result of this Consent, the Assignment or otherwise, nor shall Lender be obligated or required to perform any of Lessee's obligations under the Lease, except during any period in which Lender has assumed Lessee's rights and obligations under the Lease. Notwithstanding the foregoing sentence, upon Lender's assumption of the Lease, Lender hereby agrees to cure any Lessee defaults. Lender shall not be bound by any amendment or modification of the Lease made without its written consent. Lessor further covenants and agrees to execute and deliver, upon request of the Succeeding Lessee, an appropriate agreement of recognition of the tenancy to the Succeeding Lessee.
14. In the event the Lease is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Tenant, Landlord shall, at the option of Lender exercised within 45 days after such rejection or termination, enter into a new agreement with Lender having identical terms, conditions, agreements, provisions and limitations as the Lease (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that (i) the term under such new agreement shall be no longer than the remaining balance of the term specified in the Assigned Agreement, (ii) such new agreement shall be modified to include the non-merger contained in Section 16 hereof, as well as this provision regarding such replacement agreements, and (iii) upon execution of such new agreement, Lender cures any outstanding payment and performance defaults under the Lease.
15. So long as any of the indebtedness under the Loan shall remain unpaid or unperformed, unless Lender shall otherwise consent in writing, the fee title and the leasehold estates on the Premises shall not merge, but shall always be kept separate and distinct, notwithstanding the union of such estates in Tenant or in any lessee or in any third party by purchase or otherwise.
16. Lessor expressly denies any ownership, interest, operation, responsibility or liability for the installation, operation or maintenance of the improvements, the "System" as defined in the Lease or the Project at any time during the term of the Lease.
17. Lender will rely on the foregoing representations and agreements made by Lessor herein in connection with Lender's agreement to make the Loan. Lessor agrees that Lender and may so rely on such representations and agreements.

IN WITNESS WHEREOF, Lessor has executed this Lessor Consent and Estoppel Certificate as of the date first written above.

LESSOR:

EXHIBIT G

LESSOR CONSENT AND ESTOPPEL CERTIFICATE

(SOLAR GROUND LEASE AGREEMENT)

To: Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC
c/o Ralph A. Palumbo, Manager
117 Metro Center Boulevard -Suite 2007
Warwick, Rhode Island 02886

Co-Lessee

Date: _____

Lease: Ground Lease Agreement dated [insert date], by and between and Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC (the “Lease”)

Lessee: Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC (“SSRE”) and the (the “Co-tenant”) (together “Lessee”)

Lessor: ., (“Lessor”)

Current Lender: [Name of Lender] (“Lender”)

Premises: Certain property located in the City of Cranston, Providence County, Rhode Island, as more specifically described in Exhibits A to the Lease (the “Premises”)

Lessor acknowledges that SSRE intends to enter into a loan transaction (the “**Refinancing**”) with one or more lenders (hereafter, together with any collateral agent acting on behalf of such lenders, the “**Subsequent Secured Parties**”) in order to finance a portion of the System installation costs. Lessor’s consent to Lessee’s collateral assignment and its estoppel agreement will be required as a condition to the Refinancing. In addition to the Refinancing, SSRE is undergoing a change in control transaction (the “**Change in Control Transaction**”) involving the transfer of ownership of SSRE’s membership interests from the current owners of the membership interests to a special purpose entity (“**name of entity**” or “**Purchasers**”) that will be created to own 100% of the membership interests of SSRE. Purchasers will be owned by a holding company owned in part by [name of entity], as the asset manager, and in part by [name if applicable], and or one or more of its affiliates, as the investor. Accordingly, Lessor hereby acknowledges and agrees for the benefit of the Subsequent Secured Parties and the Purchasers as follows:

1. Upon notice by SSRE to the Lessor of the consummation of the Refinancing (which notice shall include the identity of the Subsequent Secured Parties and their information for the notices and consents referred to below), the Lessor shall promptly acknowledge receipt of such notice in writing to the Subsequent Secured Parties and confirm the continued effectiveness of this Consent.

2. Lessor hereby acknowledges and consents to SSRE's grant of security interests and collateral assignments to secure SSRE's obligations to the Subsequent Secured Parties in respect of the Refinancing, including without limitation, (i) an Assignment of Agreements (the "Assignment") pursuant to which Lessee shall collaterally assign its right, title and interest in and to the Lease for the benefit of Subsequent Secured Parties, their successors and assigns, and (ii) a leasehold mortgage by Lessee in favor of Subsequent Secured Parties, (the "Mortgage"), to be recorded with the Land Evidence Records of the City of Cranston.
3. Lessor further acknowledges and consents to the Change in Control Transaction.
4. Lessor acknowledges and agrees that the Premises consist of the land described as the "Premises" in Exhibit B to the Lease.
5. Lessee has the right to occupy and use the Premises as set forth in the Lease.
6. The Premises are available for the use of Lessee under the terms of the Lease. All duties or obligations of Lessor required under the Lease which were an inducement to Lessee to enter into the Lease have been fully performed.
7. The Lease is in full force and effect. No default exists on the part of Lessor or, to the ACTUAL knowledge of Lessor, on the part of Lessee under the Lease, nor, to the knowledge of Lessor, does any circumstance currently exist that, but for the giving of notice or the passage of time, or both, would be such a default. The Lease constitutes the entire agreement between Lessor and Lessee with respect to the use of the Premises by Lessee and has not been amended, modified or supplemented, except as included in the copy of the Lease attached hereto, and the Lease has not been superseded. There are no oral agreements between Lessor and Lessee with respect to the Premises. A true and correct copy of the Lease (including all amendments thereto) is attached to this Consent as Exhibit 1. Lessor agrees not to amend or modify the Lease without the prior written consent of the Subsequent Secured Parties. Lessor agrees to provide Subsequent Secured Parties copies of any and all notices concerning a default by Lessee under the Lease. Such notices shall be sent to the Subsequent Secured Parties at the address to be included in the notice referred to in Section 1 above (or such other address as the Subsequent Secured Parties may designate from time to time).
8. In the event of a default on the part of Lessee under the Lease, Lessor agrees that it shall accept a cure made on Lessee's behalf by the Subsequent Secured Parties. Lessor further agrees that notwithstanding the terms of the Lease, in the event Lessee defaults under the Lease and such default cannot be reasonably cured within any applicable cure period set forth in the Lease, then the "Subsequent Secured Parties shall have such additional time, but in no event longer than ninety (90) days, to cure the default, provided that it commences in good faith to cure the default within the applicable cure period, and it diligently and continuously pursues such cure.
9. Lessor agrees that upon an event of default by Lessee under the Lease, provided that such defaults have been cured by Lessee or that the Subsequent Secured Parties or their

designees have agreed to cure any such default, subject to the terms of Section 15 below, and the Subsequent Secured Parties have given notice to Lessor of their or their designees' intent to assume the rights and obligations of Lessee under the Lease, Lessor shall amend the Lease, if directed in writing by the Subsequent Secured Parties, to recognize the Subsequent Secured Parties, their successor and assigns, or their designees as the successor Lessee thereunder.

10. Lessor has received no notice of a prior sale, transfer, assignment, hypothecation or pledge of Lessee's interest in the Lease.
11. No actions, whether voluntary or involuntary, are pending against Lessor under any bankruptcy, insolvency or similar laws of the United States or any state thereof.
12. The term of the Lease will commence on the "Effective Date" and ends on the "Expiration Date", that is 25 years, plus two 5 year option periods, from the commercial operation date of the solar energy project located on the Premises (the "Project").
13. The current annual rental payable by SSRE under the Lease is at the rates and subject to the terms and conditions of the Lease.
14. Lessor acknowledges and agrees that Lessee, its agents, invitees, guests, employees, and suppliers have a non-exclusive right of ingress to and egress from the Premises, as set forth in the Lease.
15. Lessor agrees that upon an event of default by Lessee under the Lease, provided that such defaults have been cured by Lessee or that the Secured Parties have agreed to cure any such default, provided that the Secured Party has given notice to Lessor of its intent to assume the rights and obligations of Lessee under the Lease, Lessor shall amend the Lease, as directed in writing by the Secured Parties, to recognize the Secured Party, its successor and assigns, as the successor Lessee thereunder.
16. Lessor hereby agrees with the Subsequent Secured Parties that, in the event the Subsequent Secured Parties or another succeeding Lessee becomes Lessee under the Lease (the "Succeeding Lessee"), so long as such Succeeding Lessee complies with and performs its obligations under the Lease, Lessor shall recognize such Succeeding Lessee as Lessee under the Lease and the Lease shall continue in full force and effect, upon and subject to all of the terms, covenants and conditions of the Lease, for the balance of the term of the Lease, and Lessor shall not disturb the possession of such Succeeding Lessee; provided, however, the Subsequent Secured Parties shall not have any liability or obligation under the Lease solely as a result of this Consent, the Assignment or otherwise. Lessor further covenants and agrees to execute and deliver, upon request of the Succeeding Lessee, an appropriate agreement of recognition of the tenancy to the Succeeding Lessee.
17. Lessor expressly denies any ownership, interest, operation, responsibility or liability for the installation, operation or maintenance of the improvements, the "System" as defined in the Lease or the Project at any time during the term of the Lease.

18. Lessor acknowledges and agrees that the Subsequent Secured Parties and Purchasers will rely on the terms and provisions of this Consent, including the representations and agreements made by Lessor herein, in connection with the consummation by the Subsequent Secured Parties of the Refinancing and in connection with the Change in Control Transaction and Lessor agrees that the Subsequent Secured Parties and Purchasers may so rely on such terms and provisions. Lessor confirms and agrees that the Subsequent Secured Parties shall be express third party beneficiaries of this Consent.
19. Lessor agrees to execute such additional documents as the Subsequent Secured Parties may reasonably request to give effect to the provisions of this Agreement.

IN WITNESS WHEREOF, Lessor has executed this Lessor Consent and Estoppel Certificate as of the date first written above.

LESSOR:

EXHIBIT H

MEMORANDUM AND NOTICE OF LEASE

(In accordance with Section 34-11-1 of the
Rhode Island General Laws, 1956, as amended)
As of January 8, 2019

This MEMORANDUM AND NOTICE OF LEASE (this "Memorandum") is made as of January 8, 2019 by and between Ronald J. Rossi, (hereinafter, "Lessor"), and Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC, a Rhode Island Limited Liability Company, with a principal office at c/o Ralph A. Palumbo, 117 Metro Center Blvd – Suite 2007, Warwick, RI 02886 (hereinafter "SSRE") and the (hereinafter the "Co-tenant") (SSRE and the City are hereinafter referred to as "Lessee"). Lessor and Lessee are sometimes referred to herein as the "Parties".

1. LEASE AGREEMENT: Lessor and Lessee entered into that certain Lease Agreement dated as of January 8, 2019 (the "Lease"). The terms of the Lease are incorporated herein by reference.
2. PREMISES: The property located on Natick Avenue, Cranston, Rhode Island, which is more particularly described on Exhibit "A" attached hereto and by reference made a part hereof, together with easements and access rights, as provided in the Lease, including but not limited to access to and from a public way.
3. INITIAL TERM OF LEASE: The initial term of lease shall commence on January 8, 2019 and shall expire on the twenty-fifth anniversary of the date on which the solar photovoltaic facility to be constructed on the Premises in accordance with the Lease is ready for commercial operations.
4. OPTIONS TO RENEW: The Lease provides options to renew for two additional five year terms.
5. This Memorandum is executed pursuant to the provisions of the Lease and is not intended to modify the provisions set forth in the Lease.
6. Capitalized terms not defined herein shall have the meanings assigned to such terms in the Lease.
7. This Memorandum shall be governed by the laws of the State of Rhode Island without regard to its conflict of law provision.
8. This Memorandum may be signed in any number of counterparts.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum as of the date first above written.

LESSOR:

Ronald J. Rossi

STATE OF _____
COUNTY OF _____

In _____ on this _____ day of _____, 2019, before me personally appeared, who proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, or personal knowledge of the undersigned, to be the party executing the foregoing instrument and he acknowledged said instrument, by him executed to be his free act and deed, his free act and deed in said capacity and the free act and deed of.

Notary Public
Printed Name: _____
My Commission Expires: _____

[Affix Notary Seal]

[– Memorandum of Lease]

LESSEE:

SOUTHERN SKY RENEWABLE ENERGY RI-NATICK AVE-CRANSTON, LLC

By: _____
Ralph A. Palumbo
Title: President

STATE OF _____
COUNTY OF _____

In _____ on this _____ day of _____, 2019, before me personally appeared Ralph J. Palumbo, as Manager of Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC who proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, or personal knowledge of the undersigned, to be the party executing the foregoing instrument and he acknowledged said instrument, by him executed to be his free act and deed, his free act and deed in said capacity and the free act and deed of Southern Sky Renewable Energy RI-Natick Ave-Cranston, LLC.

Notary Public
Printed Name: _____
My Commission Expires: _____

[Affix Notary Seal]

[– Memorandum of Lease]

(PENMFA Counterparty)

By: _____
Name: _____
Title: _____

STATE OF _____
COUNTY OF _____

In _____ on this _____ day of _____, 2019, before me personally appeared _____, as _____ (title) on behalf of the who proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, or personal knowledge of the undersigned, to be the party executing the foregoing instrument and he/she acknowledged said instrument, by him/her executed to be his/her free act and deed, his/her free act and deed in said capacity and the free act and deed of the.

Notary Public
Printed Name: _____
My Commission Expires: _____

[Affix Notary Seal]

[– Memorandum of Lease]

EXHIBIT A

[Attached.]

EXHIBIT I

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the “Agreement”) is made this _____ day of _____, 20____, by and between _____, a _____ (“Lessee” or “Borrower”), _____, a _____ (“Lessor”), <SEMINOLE>, a _____ (“Construction Lender”), [_____], a _____ (“Mortgagor”), AND/OR _____, a _____ (“Term Lender”)].

WITNESSETH:

Lessor is the owner of a parcel of land (the “Real Property”) located in _____, _____ County, _____, more particularly described in the attached Exhibit A.

Lessor and Lessee have entered into that certain <LEASE> dated _____ (the “Lease”), [as amended _____,] a copy of which is attached hereto as Exhibit B by which Lessor has leased to Lessee a portion of the Real Property and granted to Lessee certain operation easements, including but not limited to access and utility easements (collectively, the “Premises”), which Premises are more particularly described in the attached Exhibit C.

_____, a _____ (“Sole Member”), is the sole member of Lessee, and has entered into that certain <CONSTRUCTION CONTRACT> with _____ for the purchase, installation, and maintenance of a <solar> <wind> electric energy system to be designed, procured and installed on the Premises (the “Project”), and _____, a _____, is the Manager of Lessee and Sole Member. [REVISE AS APPLICABLE]

Mortgagor is the holder of that certain <MORTGAGE> executed by Lessor, which encumbers the Real Property, dated _____, and recorded on _____, under Book _____, Page _____, as amended and assigned from time to time, to secure an indebtedness in the maximum principal amount of \$ _____, and any interest, advances or obligations secured thereby (as amended, the “Mortgage”).

Construction Lender has agreed to make a loan (the “Loan”) to Lessee, as Borrower, for the purpose of financing certain costs to construct the Project. The Construction Loan shall be secured, in part, by a collateral assignment of the Lease (collectively, the “Security Agreements”).

1. Term Lender has agreed to make a loan to Lessee (the “Term Loan”) to provide permanent financing for the ownership and operation of the Project. The Permanent Loan shall also be secured by the Security Agreements. [IF APPLICABLE]

So long as Lessee is not in default in the performance of any of the terms of the Lease

beyond applicable notice and cure periods, the parties agree that in the event Mortgagor or any other party succeeds to the interest of Lessor under the Lease ("Lessor's Successor") by foreclosure or by acquisition of title to the Real Property in lieu of foreclosure or otherwise pursuant to any rights granted to Mortgagor in any case pending pursuant to 11 U.S.C. §101 et seq., or any action taken under the Mortgage by Mortgagor, or in the event that Mortgagor exercises the rights granted to it by any assignment (any such occurrence being referred to herein as an "Attornment Event"), Lessee shall be bound to Lessor's Successor under all of the terms of the Lease for the balance of the term thereof remaining and any extension or renewal terms thereof with the same force and effect as if Lessor's Successor was the lessor under the Lease, and the Lessee shall attorn to Lessor's Successor as its lessor, such attornment to be effective and self-operative, without the execution of any further instruments on the part of any of the parties hereto, immediately upon Lessor's Successor succeeding to the interest of Lessor under the Lease. Notwithstanding anything herein to the contrary, Lessee shall be under no obligation to pay rent or other costs, if any, which may be due Lessor pursuant to the terms of the Lease to Lessor's Successor until Lessee receives written notice from Lessor's Successor that it has succeeded to the interest of Lessor under the Lease. The respective rights and obligations of Lessee and Lessor's Successor upon such attornment shall, to the extent of the then remaining balance of the term of the Lease and any extension or renewal thereof, be the same as now set forth therein, it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

Subject to Lessee's attornment to Lessor's Successor pursuant to Section 7 above, upon the occurrence of an Attornment Event, so long as Lessee is not in default in the performance of any of the terms of the Lease beyond applicable notice and cure periods, Lessor's Successor (i) shall not affect or disturb Lessee's right to possession, use and enjoyment of the Premises; (ii) shall be bound to Lessee under all of the terms of the Lease for the balance of the term thereof remaining and any extension or renewal terms thereof with the same force and effect as if Lessor's Successor was the lessor under the Lease, and; (iii) shall perform each and every one of the obligations of Lessor thereunder. In no event shall Lessor's Successor be liable for any act or omission of any prior lessor, be subject to any offsets or defenses which Lessee might have against any prior lessor, or be bound by any rent or additional rent which may be due Lessor pursuant to the terms and provisions of the Lease which Lessee might have paid to any prior lessor for more than the current month. Upon any transfer of Lessor's interest in the Lease to Lessor's Successor upon the occurrence of an Attornment Event and upon each successive transfer thereafter, unless Lessor's Successor with respect to each such transfer obtains a non-disturbance agreement for the benefit of Lessee in form and substance substantially similar to this Agreement from any senior interest holder of each such Lessor's Successor (including but not limited to any lender to or ground landlord of the Lessor's Successor) who has the power to foreclose, sell, assign, transfer or otherwise terminate the interest of Lessor's Successor in the Lease, the Lease (as amended hereby) shall be deemed to be senior to the interests of such senior interest holder.

Mortgagor and Lessor understand, acknowledge and agree that notwithstanding anything to the contrary contained in the Lease, the Mortgage and/or any related financing documents, including, without limitation any UCC-1 Financing Statement, neither Lessor nor Mortgagor shall acquire any interest in any fixtures, equipment and/or other property owned or leased by Lessee and now or hereafter located on or affixed to the Premises or any portion thereof except

to the extent, if any, set forth in the Lease or to the extent owned by Lessor. Mortgagor and Lessor hereby expressly waive any interest which Mortgagor or Lessor may have or acquire with respect to fixtures, equipment and/or other property owned or leased by Lessee which is now, or hereafter, located on or affixed to the Premises or any portion thereof, except to the extent, if any, set forth in the Lease or to the extent owned by Lessor, and Mortgagor and Lessor hereby agree that same do not constitute realty regardless of the manner in which same are attached or affixed.

So long as Lessee is not in default in the performance of any of the terms of the Lease beyond applicable notice and cure periods, in no event whatsoever shall Mortgagor or Lessor disturb the rights to possession, use and enjoyment of Lessee in and to the Premises, nor shall the leasehold estate granted by the Lease be affected in any manner whatsoever, nor the obligations of the parties thereunder be modified or amended in any way, notwithstanding any foreclosure or proceeding in lieu thereof affecting the Premises and whether or not Lessee is made a party thereto. Each of Lessor and Mortgagor agrees that it will not oppose, in court or otherwise, any position taken or argument or claim made by Lessee or Lessor, as the case may be, that the Lease is an unexpired lease of real property (as such term is used in 11 U.S.C. §365(h) or any successor statute) under which Lessor is the lessor and Lessee is the lessee.

Mortgagor acknowledges and agrees that each of Construction Lender and, upon the making of the Term Loan, Term Lender, is a "Lender", as defined in the Lease and each is entitled to the provisions of the Lease for the benefit of Lender (as defined in the Lease).

Notwithstanding anything to the contrary set forth in the Lease, and the leasehold estate created thereby, all of Lessee's rights thereunder shall be and shall at all times remain subject, subordinate, and inferior to the Mortgage and the liens thereof, and all rights of Mortgagor thereunder.

The rights and obligations hereunder of Lessee, Lessor and the Mortgagor shall bind and inure to the benefit of their respective successors and assigns. This Agreement is intended by the parties hereto to be an amendment to the Lease and the provisions hereof shall supersede any inconsistent provisions contained in the Lease.

Lessor and Mortgagor hereby consent to any license given by Lessee to _____ for access to, and use of, the Premises in connection with the Project.

Mortgagor hereby consents to the execution and delivery of the Lease and the Security Agreements, as each may be amended from time to time, the Construction Loan and the Term Loan and any license given by Lessee to _____ for access to, and use of the Premises in connection with the Project, and Mortgagor expressly waives any default under the Mortgage arising out of Lessor's failure to obtain Mortgagor's prior consent to the Lease, and further agrees to the terms and conditions of this Agreement.

This Agreement and the representations and agreements made herein are given with the understanding that this Agreement constitutes a material inducement for Construction Lender in making the Construction Loan to Lessee and to Term Lender in making the Term Loan, and that Construction Lender shall rely hereon in making the Construction Loan to Lessee and Term

Lender shall rely hereon in making the Term Loan. This Agreement and the representations and agreements made herein shall inure to the benefit of Construction Lender and Term Lender, and each of their respective successors and assigns, and shall be binding on Lessor, its heirs, legal representatives, successors and assigns.

This Agreement may be executed in any number of counterparts, each of which shall be effective only upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

[Signatures appear on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year as first indicated above.

LESSOR:

_____, a _____

By: _____
Name: _____
Title: _____

LESSEE:

_____, a _____

By: _____
Name: _____
Title: _____

LENDER:

_____, a _____

By: _____
Name: _____
Title: _____

CONSTRUCTION LENDER:

_____, a _____

By: _____
Name: _____
Title: _____

TERM LENDER:

_____, a _____

By: _____
Name: _____
Title: _____

[Notary blocks appear on following pages.]

STATE OF _____

§

COUNTY OF _____

§

§

This instrument was acknowledged before me on _____, 20____, by
_____, the _____ of _____, a
_____, on behalf of said entity, who is personally known to me or
provided _____ as identification.

Notary Public, State of _____

Printed Name

My Commission Expires: _____

STATE OF _____

§

COUNTY OF _____

§

§

This instrument was acknowledged before me on _____, 20____, by
_____, the _____ of _____, a
_____, on behalf of said entity, who is personally known to me or
provided _____ as identification.

Notary Public, State of _____

Printed Name

My Commission Expires: _____

STATE OF _____

§

COUNTY OF _____

§

§

This instrument was acknowledged before me on _____, 20____, by
_____, the _____ of _____, a
_____, on behalf of said entity, who is personally known to me or
provided _____ as identification.

Notary Public, State of _____

Printed Name

My Commission Expires: _____

STATE OF _____

§

COUNTY OF _____

§
§

This instrument was acknowledged before me on _____, 20____, by
_____, the _____ of _____, a
_____, on behalf of said entity, who is personally known to me or
provided _____ as identification.

Notary Public, State of _____

Printed Name

My Commission Expires: _____

STATE OF _____

§

COUNTY OF _____

§
§

This instrument was acknowledged before me on _____, 20____, by
_____, the _____ of _____, a
_____, on behalf of said entity, who is personally known to me or
provided _____ as identification.

Notary Public, State of _____

Printed Name

My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

[INSERT]

EXHIBIT B

[LEASE]

EXHIBIT C

DESCRIPTION OF PREMISES

[INSERT]

Exhibit F

Form of Site Specific Agreement

[Starts on following page]

SITE SPECIFIC AGREEMENT

This Site Specific Agreement is made and entered into as of _____, 20__ (the “*Effective Date*”), by and between _____, a Rhode Island limited liability company (the “*Seller*”), and _____, a municipal corporation (“*City*”). The Seller and City may be referred to herein collectively as the “*Parties*,” and individually as a “*Party*.”

RECITALS

A. Seller’s affiliate, _____ (the “*Original Seller*”) and the City entered into that certain Net Metering Financing Arrangement dated as of _____ (the “*NMFA*”). Any capitalized terms used herein but not separately defined herein shall have the definition set forth in the NMFA.

B. As set forth in Section 18.11(e) of said NMFA, Original Seller reserved the right to fulfill its obligation to sell the City Renewable Net Metering Credits to offset a portion of the City’s Total Targeted Electricity Offset from one or more renewable energy generation facilities developed by Original Seller and/or its Affiliates pursuant to a separate net metering financing arrangement.

C. Seller is an Affiliate of Original Seller, and like Original Seller is in the business of developing renewable energy generation facilities. Seller is in the process of constructing, or intends to commence construction of, one or more solar renewable energy generation facility(ies) at the location(s) described in Exhibit A attached hereto (collectively, the “*Property*”), which facility(ies) is(are) anticipated to produce the net metering capacity output set forth in Exhibit B (collectively, the “*Facility*”).

D. Seller and the City would like to enter into this Agreement (as defined below) to acknowledge that Seller will be selling, and the City will be purchasing, Renewable Net Metering Credits generated by the Facility on all the same terms and conditions set forth in the NMFA, except as otherwise expressly set forth herein.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration the sufficiency and receipt of which are acknowledged by the Parties, and intending to be legally bound hereby, each Party hereby agrees as follows:

1. Incorporation of NMFA Terms. The Parties hereby acknowledge and agree that the terms and conditions set forth in the NMFA (including without limitation the calculation of the Renewable Net Metering Credit Price as set forth in Exhibit B to the NMFA, but excluding Section 4.1.1 of the NMFA) are hereby incorporated into this Agreement just as though fully set forth herein, provided that to the extent of any inconsistency between the terms set forth in this Agreement and the terms set forth in the NMFA, this Agreement shall control.

2. Meaning of Terms. As stated in the recitals above, any capitalized terms used herein but not separately defined herein shall have the definition set forth in the NMFA, provided however that any such terms that are defined using directly analogous terms with a different definition in this Agreement shall be modified to

include such different definition. By way of example, the Ground Lease that Seller and the City (as co-tenants) are required to enter into pursuant to Section 2.2(f) of the NMFA refers to a ground lease for the Property (as such term is defined in this Agreement) similar in the form attached to the NMFA as Exhibit E. The following terms, as used herein and in the NMFA as incorporated herein, shall have the following meanings:

"Agreement" means this Site Specific Agreement, including without limitation the terms and provisions of the NMFA incorporated herein as set forth in Section 1 above. This Agreement is intended by the Parties to create a relationship between Seller and the City that qualifies as a Net Metering Financing Arrangement under the Net Metering Rules. Any references in this Agreement to specific sections shall mean such section in the NMFA, as incorporated herein.

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

"Facility" has the meanings set forth in the recitals. For avoidance of doubt, except as otherwise expressly provided herein, the term "Facility" as used in this Agreement shall correspond with the term "Generation Unit" as defined in R.I. Gen. Laws §39-26-2 and as used in the Net Metering Rules.

"Outside Construction Commencement Date" means the date that is eighteen (18) months after the Effective Date, provided that such period of time shall be automatically extended for a period of time concurrent with the periods of time required for (i) the LDC's completion of any required LDC System upgrades or resolution of any other delays caused through no direct fault of Seller, by the LDC, including, without limitation, the LDC's failure to comply with its interconnection tariff ("LDC Delay"), (ii) the resolution of any challenge to any permit or approval relating to the Facility, and (iii) any weather related delays.

"Property" shall have the meaning set forth in the Recitals of this Agreement.

"Seller" shall have the meaning set forth in the introductory paragraph of this Agreement (and shall not be construed to include the Original Seller).

3. **Limitation of Liability.** The Parties acknowledge and agree that Seller shall not be liable for any acts of Seller's Affiliate under, through or arising out of the NMFA (including without limitation any defaults by Seller's Affiliate thereunder) nor shall Seller be otherwise deemed a party of the NMFA. Likewise, Seller's Affiliate(s) shall not be liable for any acts of Seller under, through or arising out of this Agreement (including without limitation any defaults by Seller hereunder), the purpose and intent being that the NMFA and this Agreement shall be considered separate and distinct net metering financing arrangements by and between the signatories thereto.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives under seal as of the Effective Date.

CITY OF CRANSTON, RHODE ISLAND

By: _____
Name: _____
Title: _____

_____, LLC

By: _____
Name: Ralph A. Palumbo
Title: Manager

Exhibit A to the Site Specific Agreement

PROPERTY

The Property may include, without limitation, the real property known as the following:

1. _____

In addition, in the event Seller designates additional or different renewable energy generation facilities to be included in the definition of Facility pursuant to Section 3.1 of the Agreement, then the real property upon which such additional facility(ies) is(are) located shall be included in the definition of "Property".

Exhibit B to the Site Specific Agreement

DELIVERY OF RENEWABLE NET METERING CREDITS

1. The Facility Targeted Electricity Offset is initially estimated by Seller to be _____ kWh annually. The Seller projects that the Facility will be capable of an output of up to _____ kWh annually for the first year following the Commercial Operation Date (the "**Designed Output**"). Following such first year, the Designed Output may be lowered each year to not less than 0.50% of the Designed Output for the prior year due to engineering constraints set by the LDC (the "**Adjusted Designed Output**"). Notwithstanding anything contained herein to the contrary, in the event the size or location of the Facility is altered pursuant to Section 3.1 of the Agreement, then the Designed Output shall be modified to match the actual output capable of being produced at the Facility as so altered.
2. The "**City Allocation Percentage**" shall be a percentage, calculated by dividing the Facility Targeted Electricity Offset (which may be modified from time to time pursuant to Section 3.1 and in the definition of Facility Targeted Electricity Offset) by the Designed Output or Adjusted Design Output, as the case may be. For illustration purposes only, if the Facility Targeted Electricity Offset was 7,500,000 kWh and the Designed Output (or Adjusted Design Output) of the Facility was 15,000,000 kWh, the City Allocation Percentage would be 50% (7,500,000/15,000,000). On an annual basis, City shall purchase the City Allocation Percentage of all the Renewable Net Metering Credits generated by the Facility. Said Renewable Net Metering Credits shall be net metered to its accounts, including accounts servicing the school district, housing authority, and water district.