



A Limited Liability Partnership

March 24, 2017

Via Email: Luly.massaro@puc.ri.gov
Ms. Luly Massaro, Clerk
Rhode Island Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

Docket No. 4694– Southern Sky Renewable Energy RI

Dear Madam Clerk:

Enclosed for filing please find the following document:

**Petitioner's Response To Public Utilities Commission's First Set Of Data Requests
Issued March 22, 2017**

I will be forwarding via regular mail, postage prepaid, an original and nine copies as well.

Should you have any questions concerning this filing please contact me at (401) 272-1400.

Thank you for your attention to this matter.

Sincerely,

Danielle M. Smith,
Managing Paralegal

Enclosures

1080 Main Street
Pawtucket, Rhode Island 02860
p 401.272.1400 f 401.272.1403
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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF SOUTHERN SKY :
RENEWABLE ENERGY RHODE ISLAND, LLC :
FOR A DECLARATORY JUDGMENT ON : DOCKET NO. 4694
RHODE ISLAND GENERAL LAWS § 39-26.4, :
THE NET METERING ACT :

PETITIONER'S RESPONSE TO PUBLIC UTILITIES COMMISSION'S FIRST SET OF
DATA REQUESTS DIRECTED TO SOUTHERN SKY RENEWABLE ENERGY, LLC
(Issued March 22, 2017)

- 1-1. What is the minimum term of a ground lease or easement that would be entered into between the developer, municipality, and the owner of the property?

Response: As set forth in paragraph 3 of the form of lease submitted herewith, the initial lease term is for Twenty-Five (25) years. An easement agreement would be co-terminus with the twenty-five (25) year term of the Public Entity Net Metering Financing Arrangement.

- 1-2. Please provide an example of the terms of a ground lease for purposes of meeting the requirements of site control under the Net Metering Act.

Response: An example of the terms of a ground lease is submitted herewith.

- 1-3. Please provide an example of the terms of an easement for purposes of meeting the requirements of site control under the Net Metering Act.

Response: An example of the terms of an easement is submitted herewith.

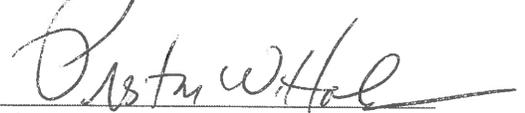
- 1-4. Would the ground lease or easement agreement be recorded with the register of deeds?

Response: As is typical of a lease, a Memorandum of Lease, rather than the entire document will be recorded with the register of deeds. With respect to an easement agreement, the easement will be recorded with the register of deeds.

Respectfully Submitted,

SOUTHERN SKY
RENEWABLE ENERGY
RHODE ISLAND, LLC

By their Attorney



Christian F. Capizzo, Esq. (#6655)

Preston W. Halperin, Esq. (#5555)

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Email: phalperin@shslawfirm.com

Dated: March 24, 2017

CERTIFICATE OF SERVICE

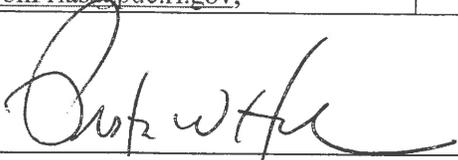
The undersigned hereby certifies that on this 24TH day of March 2017, a true and accurate copy of the within Petitioner’s Response To Public Utilities Commission’s First Set Of Data Requests Issued March 22, 2017, was sent via electronic mail to the following counsel of record/parties as designated by the Division of Public Utilities:

If hard copies of this document and its attachments are required by any party (other than the Commission Clerk which will receive hard copies), please send your request to dsmith@shslawfirm.com.

Docket No. 4694– Southern Sky Renewable Energy RI – Petition for Declaratory Judgment

Service List provided by PUC

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File an original & 9 copies w/: Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	Luly.massaro@puc.ri.gov ;	401-780-2107
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DIVIDER PAGE

LEASE AGREEMENT

This Lease Agreement (“*Lease*”) is dated as of _____, 2017, (the “*Effective Date*”), and is entered into by and among [Insert name and entity type] with an address of [Insert address], (“*Lessor*”), Southern Sky Renewable Energy Rhode Island, LLC [or project entity to be formed] a Rhode Island limited liability company, for itself and any and all assignees permitted hereunder, with a principal office at 117 Metro Center Blvd–Suite 2007, Warwick, RI 02886 (hereinafter “*SSRERI*”) and [Insert town or co-party] with a principal place of business located at [Insert Town] (hereinafter “the Town”) (SSRERI and the Town are hereinafter referred to together as “*Lessee*”). Lessor and Lessee are sometimes referred to herein as “the Parties.”

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

WHEREAS, Lessor is interested in leasing a portion of the Property (the “Premises”) to Lessee for the purpose of installing and operating up to a [insert watts, i.e. (DC +/-)] solar photovoltaic system (the “System”);

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

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

WHEREAS, the SSRERI was awarded an RFP on or about [Insert date] by the Town to develop, design, engineer, access construct, monitor, install, own, maintain and operate the System to be located on the Premises;

WHEREAS, SSRERI shall own and, in its discretion, sell or otherwise transfer to others the electrical output of the System and 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 all or part of the property designated by the [Insert description of Property], Town Tax Assessor’s as Lots [] and on the Assessor’s Plat Maps [] as described in **Exhibit A**, together with any and all access rights and easements of record.
- b) Subject to receipt of the first rent payment and the terms of this Lease, Lessor hereby agrees to lease the Premises to Lessee to occupy, and to develop, design, engineer, construct, access, monitor, install, own, operate and maintain thereon the System for the generation and distribution of electrical power (the “*Permitted Use*”), and for no other purpose. The Permitted Use shall also include the right to test, survey and check title of the Premises, decommissioning of the System as set forth in Section 4 of this Lease, and perform any other acts necessary to the successful and secure operation of the System, as determined by the Lessee in its sole discretion. Lessor hereby also grants to Lessee and the applicable utility company for a period co-terminus with the Lease, a non-exclusive easement over the remainder of Lessor’s property for access, ingress, egress, adequate

shade border tree clearing/vegetation maintenance to prevent shade cast and utilities to the Premises to the extent reasonably necessary to install, interconnect, operate or gain access to the System or the Premises (the “*Easements*”). The Parties agree that, notwithstanding anything to the contrary in this Lease, the exact location of the Premises and Easements shall be as mutually agreed by the Parties and shown on a formal plan, stamped by a registered engineer, to be produced by SSRERI at its sole expense within one hundred twenty (120) days of the Effective Date, but in all events before any construction or installation work commences at the Premises (the “*Formal Plan*”). Once the Formal Plan is available, this Lease Agreement shall be deemed to have been amended to incorporate the Formal Plan into Exhibit A.

- c) Lessor represents and warrants that at the time of the commencement of the System the Premises will be in compliance with all applicable federal, state and local laws, regulations, bylaws, codes and other legal requirements applicable to the Premises and Lessor shall provide documentation of the same as reasonably requested by the Lessee.
- d) Lessee shall not be liable for any conditions on the Premises arising from or related to acts or omissions occurring prior to the Effective Date, including conditions related to any Hazardous Substances.
- e) SSRERI 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 State of Rhode Island and the [Insert Town] (the “*Governmental Approvals*”).
- f) The Parties hereby acknowledge and agree that Lessee’s obligations under this Lease are contingent upon SSRERI:
 - i. obtaining any and all necessary permits and approvals from the [Insert Town] and the State of Rhode Island including but not limited to, planning board and zoning approval, RIDEM permits so as to allow the System to be operable for the permitted use;
 - ii. Any other federal, state or local permits or approvals necessary to construct and operate the System on the Premises;
 - iii. Completing, to SSRERI’s sole satisfaction an examination of title, survey, topographical, environmental, wetlands delineations and surveying, soil conditions and availability of utilities, sewer use and water supply, the overall regulatory framework governing the Premises and the System, including zoning and any other land use requirements;
 - iv. Obtaining a reasonably acceptable interconnection agreement and associated cost budget to National Grid’s distribution system and securing project approval in the virtual net metering credit program for municipalities and/or State of Rhode Island agencies with National Grid;
 - v. Obtaining a 25 year public/municipal/state agency Public Entity Net Metering Financing Arrangement with an investment grade counter-party at a discount rate reasonably acceptable to SSRERI; and

- vi. Obtaining a 25 year payment in lieu of tax agreement (“PILOT”) for both real and personal property taxes, with the [Insert Town] at an amount not to exceed [Insert amount] per MW (DC) during the first term, reasonably acceptable to SSRERI.
 - g) If the above conditions are not met or if SSRERI is unable to obtain the Governmental Approvals, or purchase the necessary equipment despite its diligent efforts, or reasonably determines that the Premises are not suitable for Lessee’s intended use, or reasonably determine that the Premises, or the Lessee’s use of the Premises for the System, are not in conformance with any of the governmental requirements, or reasonably determines that any of the governmental requirements will cause the project to be no longer economically viable, SSRERI may terminate this Lease.
 - h) Definitions. Capitalized terms not otherwise defined in this Lease have the meanings assigned to them in Exhibit B.
2. Rent; Deposit.
- a) Commencing on the Effective Date, and continuing until the first day of the month following the date that the System has been commissioned and achieved Commercial Operations as defined in Exhibit B, SSRERI shall pay Lessor the lump sum of one (\$1.00) Dollar (“Pre-Commercial Operations Term”).
 - b) Commencing on the first day of the month following the date the facility has been commissioned and has achieved Commercial Operations, SSRERI shall pay annual rent payments (“Base Rent”) in the amount of [Insert amount] per installed DC MW (current estimate is for a [insert MW DC] project with the first year annual base rent estimated at [Insert \$ amount]). Base Rent shall escalate by [Insert %] percent basis points (Insert %) per year starting in year two (2) of the Lease Term.
 - c) Real estate taxes will be paid by SSRERI as “Additional Rent” in accordance with and subject to the approval of a tax agreement or other acceptable agreement between SSRERI and the [Insert Town] (“PILOT”). The per MW rent shall increase if the PILOT agreement with the Town is below [Insert amount] per MW on a dollar for dollar basis (ex. if PILOT agreement is fixed for 25 years at [Insert amount] per MW the 2nd term, year one per MW rent payment shall increase to [Insert amount] per MW). “Additional Rent” shall also include personal property taxes, betterments or assessments, fees or charges, of whatever nature, that are assessed or chargeable during the Term of this Lease in relation to the Premises, SSRERI’s use thereof, and/or the System. “Base Rent” and “Additional Rent” shall hereinafter be collectively referred to as “Rent”. In no event shall the annual Base Rent amount be less than [Insert \$ amount].
 - d) Contemporaneously with the execution and delivery of the Letter of Intent, SSRERI has deposited in escrow, with an escrow agent, an earnest money deposit in the amount of [Insert \$ amount] (the “Deposit”). The Deposit shall be refundable if SSRERI has performed its obligations under the Letter of Intent but has not obtained permits, approvals or interconnection agreement prior the expiration of the permit/interconnection period set forth in the Letter of Intent, terminates this Letter of Intent due to a Lessor default or as otherwise may be set forth in the Letter of Intent. The Deposit shall be credited towards the Base Rent Payments due under the lease. The Deposit shall be held

in escrow in a non-interest-bearing account with an escrow agent, who may be Lessor's attorney and who shall be permitted to continue to represent Lessor ("Escrow Agent").

- e) 1st Option to Extend-Rent. Should SSRERI exercise Lessee's 1st option to extend pursuant to the terms of this Lease for an additional five (5) years, the Base Rent shall escalate by [Insert %] in excess of the annual Base Rent payment for the last year of the 2nd Term, with a [Insert %] annual escalation thereafter during the 1st option to extend with payment by SSRERI of all triple net costs (ex. property taxes and insurance).
- f) 2nd Option to Extend-Rent. Should SSRERI exercise Lessee's 2nd option to extend pursuant to the terms of this Lease for an additional five (5) years, the Base Rent shall escalate by [Insert %] in excess of the annual Base Rent payment for the last year of the 1st Option to Extend, with a [Insert %] annual escalation thereafter during the 1st option to extend with payment by SSRERI of all triple net costs (ex. property taxes and insurance).

3. Term and Termination; Holdover.

- (a) The Pre-Commercial Operation Term of this Lease shall commence on the Effective Date hereof and shall continue until the System is commissioned and has achieved Commercial Operations as defined in Exhibit B.
 - (b) Subject to the provisions herein concerning payment of Base Rent, the Post-Commercial Operations term of this Lease shall commence on the first day of the month following the date that the System has been commissioned and has achieved Commercial Operations ("the Lease Term"), and shall terminate on the twenty-fifth (25th) anniversary of the Commercial Operations Date (the "Expiration Date"), unless otherwise extended or terminated in accordance with the provisions of this Lease.
 - (c) SSRERI shall provide written notice to Lessor of the Commercial Operations Date within ten (10) Business Days after such date has been achieved.
 - (d) Lessee shall have two options to extend the Lease Term for five (5) additional years each by providing Lessor with written notice of Lessee's election to extend on or before expiration of the Lease Term or the extended term. If the Lease is terminated, SSRERI shall, at its sole cost and expense, remove the System and restore the Premises in accordance with Section 4. In connection with such removal and restoration, SSRERI 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 Public Entity Net Metering Financing Arrangement ("PENMFA") and/or Payment In Lieu of Taxes Agreement ("PILOT") (collectively referred to as "Solar Agreements") between SSRERI and the Town is terminated, Lessor agrees to release the Town from any and all obligations under this Lease. Furthermore, upon termination of the Solar Agreements the Town agrees that its rights as a Lessee, under this Lease, will terminate and the Parties will have no further obligations to each other.
4. Removal of System at Expiration. Upon the expiration or earlier termination of the Lease, SSRERI shall, at its sole cost and in accordance with all Applicable Laws, remove the System and restore the Premises to its original condition by the Removal and Restoration Date. SSRERI shall have no obligation to remove any road, utility installations, or building foundations installed upon the Premises. In the event SSRERI fails to complete the removal

of the System and restoration of the Premises by the Removal and Restoration Date, Lessor shall have the right (but not the obligation), at its option, in its sole discretion, to cause the removal of the System by its employees or a third-party contractor and complete restoration of the Premises.

5. System Construction. SSRERI shall, with the reasonable cooperation of Lessor, schedule and coordinate all work so as to avoid interference with or disruption of Lessor activities, and shall conduct a pre-construction meeting with Lessor before commencement of any construction activities. SSRERI 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 “DEM”) and Local Electric Utility, and any and all applicable manufacturer’s warranties and instructions. SSRERI 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, SSRERI shall keep Lessor informed regarding the progress, scheduling, and coordination of the work, and shall conduct progress meetings with representatives of Lessor.
6. System and Output Ownership. Lessor acknowledges and agrees that SSRERI 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 is, and shall remain, the personal property of the SSRERI 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 the SSRERI installed on the Premises, and SSRERI may remove all or any portion of the System at any time and from time to time as SSRERI 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 SSRERI 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, SSRERI 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 SSRERI 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 SSRERI shall restore the areas of the Tests to their original condition, and shall not be permitted to perform any destructive testing or inspections. SSRERI shall take all precautions against any injury to the Premises and adjacent property and structures and to maintain the Premises in a good and safe condition. Lessor shall designate space on the Premises, if available, 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 SSRERI shall, reasonably remove trash and debris from the space so designated, and shall restore the space to its original condition promptly after such temporary use. SSRERI shall at all times exercise reasonable care and conduct themselves 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. SSRERI shall not obstruct access to the Premises, and shall not interfere with or disrupt Lessor activities and Lessor's (or any existing tenants') use of those portions of the Property, if any, that are beyond and not included in the Premises (the "Reserved Property"), or with operations therein/on. 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 SSRERI 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 Property and the Premises. Subject to the Lessor activities, 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. 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.
 - b) Lessor's Alienation of Premises. Lessor shall not sell, assign or otherwise alienate the Premises unless Lessor shall have given 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. 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 the Lessor activities and the requirements of Applicable Law, 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 SSRERI or its permitted assignee at its sole cost and expense.

- d) Non-Disturbance Agreements. Upon Lessee's request and at SSRERI's sole cost and expense, Lessor shall reasonably assist Lessee in requesting a non-disturbance agreement ("NDA") in favor of Lessee from any third party who currently has an interest in the Premises. Further, Lessor shall obtain an NDA from any third party who in the future obtains, with Lessor's permission, an interest in the Premises, including, without limitation, any Lenders to Lessor. Any such NDA 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.
 - e) Insolation. Lessor acknowledges and agrees that the solar easement granted pursuant to this Lease is essential to the value of the interest granted herein and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall, to the extent that it has the authority to do so, not permit any interference with insolation on and at the Premises. Without limiting the foregoing, Lessor shall not construct or permit to be constructed any structure on the Premises or any adjacent or nearby property that could adversely affect insolation levels, permit growth of foliage that could adversely affect insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog, or steam or other air-borne impediments to insolation. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that has a reasonable likelihood of diminishing the insolation to the Premises, Lessor shall cooperate with Lessee's efforts to prevent interference with insolation on or at the Premises including but not limited to efforts to obtain, at SSRERI's sole expense, solar easement agreements from adjacent property owners.
 - 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.
 - g) Representations Regarding Security Interest in System. Lessor acknowledges and understands that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest under the Uniform Commercial Code in the System and the Leasehold Mortgage (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. SSRERI 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 SSRERI's sole cost and expense, and SSRERI shall be responsible for all utility and other related expenses.
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, SSRERI 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) Statutory Filings. SSRERI shall be responsible for any statutory filings required by law.
 - c) Notice of Damage or Emergency. SSRERI shall immediately notify Lessor if SSRERI 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.
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 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) SSRERI Indemnity. SSRERI agrees to indemnify, defend, hold harmless Lessor and the Town 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 SSRERI 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 SSRERI's agents, employees contractors, subcontractors, licensees or invitees.
 - b) Exceptions: SSRERI shall have no obligation to defend, indemnify or save harmless Lessor and the Town 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 and/or the

Town 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 Premises prior to the Effective Date or (iv) Hazardous Substances present at the Premises prior to the Effective Date.

- c) Lessor Indemnity. To the extent covered by Lessor’s environmental liability insurance policy, 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 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 but discovered in the future regardless of the cause of the condition or (ii) the failure of Lessor or its agents, employees, contractors, subcontractors, licensees or invitees to comply with the Environmental Laws.

Lessor agrees to use its best efforts to cause Lessee to be named as an additional insured under the existing environmental insurance policy, or alternatively to assign Lessor’s rights under said policy to Lessee. Provided that Lessee is named as an additional insured, or said environmental liability is assigned to Lessor as aforesaid, Lessor’s indemnification as set forth in this subparagraph shall be null and void.

- d) Costs. The indemnifications in this Section specifically include reasonable costs, expenses and fees incurred in connection with any investigation of the Premises conditions or any clean-up, remedial, removal or restoration work required by any governmental authority.
- e) Survival. The provisions of this Section will survive the expiration of this Lease.

12. Maintenance. The System shall be operated and maintained and, as necessary, repaired by SSRERI 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, SSRERI 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 Lessee 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 SSRERI, provided that before SSRERI 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 in the same manner as was required for the initial installation of the System under this Lease. SSRERI shall install, implement and maintain all security measures required by Applicable Laws, and may, in addition to those measures, use any and all appropriate means of restricting third-party access to the System and Premises. SSRERI 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. If SSRERI damages the Premises or any other property of Lessor, SSRERI shall promptly repair

and restore the damaged areas or property at its sole cost and expense without any notice from Lessor.

13. Insurance. SSRERI shall maintain the insurance coverages set forth in Exhibit C in full force and effect throughout the Lease Term. Upon execution of this Lease, SSRERI shall provide copies of all insurance policies to Lessor, and shall, on each anniversary of the Effective Date, furnish current certificates evidencing that the coverage required is being maintained.

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) System Loss. In the event of any harm to the System that was not a result, in whole or in part, by the fault of SSRERI and, in the reasonable judgment of SSRERI, results in total damage, destruction or loss of the System (“*System Loss*”), SSRERI shall, within thirty (30) business days following the occurrence of such System Loss, notify Lessor in writing whether SSRERI is willing, notwithstanding such System Loss, to repair or replace the System and to continue the Lease. In the event that SSRERI notifies Lessor that SSRERI is not willing to repair or replace the System, the Lease will terminate effective on the last day of the month in which SSRERI has fully completed removal of the System and restoration of the Premises in accordance with Section 4; and SSRERI shall, subject to such removal and restoration, be entitled to all proceeds of SSRERI’s insurance policies with respect to the System Loss and Lessor shall, subject to Applicable Laws, return to SSRERI any prepaid but unearned rent.

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, 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 Lessee’s obligations under the Hazardous Substances section, SSRERI shall indemnify, hold harmless, release and defend Lessor from and against all claims (i) arising directly or indirectly from the failure of SSRERI 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 SSRERI. However, in no event shall SSRERI 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) Town Indemnity. SSRERI shall indemnify, hold harmless, release and defend the Town 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 the Town.

- 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 and both the Lessor and Lessee hereby waive any claims either Party may have with respect to the foregoing.
- e) Survival. The provisions of this Section shall survive termination or expiration of this Lease.
- f) Lessee Responsibility. Notwithstanding anything to the contrary contained herein, it is understood and agreed that SSRERI 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 its status as co-tenant hereunder, Lessor agrees that the Town shall not be responsible for payment of any amounts that are due or that may become due under this Lease.
15. Casualty. In the event the Premises shall, through no fault of SSRERI, be so damaged or destroyed by fire or other casualty so as to make the use of the Premises demonstrably unsuitable for the operation and maintenance of the System, or SSRERI reasonably determines that the continued operation, replacement or repair of the System will not be economic or feasible, then SSRERI may elect to terminate this Lease without penalty upon thirty (30) days written notice to Lessor and on the date so specified this Lease shall expire fully as if such date were the date set forth above for the expiration of this Lease, and this Lease shall be null and void, without recourse to the Parties, other than SSRERI's obligation to remove the System as herein provided and such other provisions that are stated herein to survive said termination. In the event of such termination, SSRERI shall remove the System at its sole cost and expense. If SSRERI does not elect to terminate this Lease in the event of such a casualty, it shall provide written notice to Lessor of that election, and the rent shall be abated by an amount reasonably determined by Lessor beginning on the date of Lessor's receipt of such notice until such time as the use of the Premises is restored by SSRERI, provided SSRERI commences such restoration promptly upon such election and diligently performs the restoration to completion. SSRERI shall also have the sole responsibility for restoration of the System.
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 SSRERI's reasonable determination to render the Premises demonstrably unsuitable for SSRERI's use, SSRERI 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, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated which for the SSRERI will include, where applicable the unamortized value of the System, moving expenses and business dislocation expenses. SSRERI will be entitled to reimbursement for any prepaid rent paid pursuant to this Lease.
17. Assignment; Change of Control; Power of Attorney.
- a) Assignment. This Lease and Security Interest may be assigned by SSRERI on its behalf and on behalf of the Town upon the written consent of Lessor, which shall not be unreasonably withheld, provided however that SSRERI may, without Lessor's consent, (i) assign this Lease and Security Interest as collateral for financing necessary for the construction, operation or maintenance of the System; (ii) assign this Lease and Security

Interest in connection with any merger, consolidation or sale of substantially all of the assets or equity interests of the Lessee. Upon the request of SSRERI or its Lender, the Lessor shall execute a consent and agreement in a form reasonably requested by SSRERI or Lenders similar to the form attached hereto as **Exhibit D**.

b) **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 permitted heirs, successors and assign.

c) **Change of Control**. In the event of a Change in Control, upon the request of SSRERI, the Lessor shall execute a consent and agreement in a form reasonably requested by SSRERI similar to the form attached hereto as **Exhibit E**. Such consent is not to be unreasonably withheld, conditioned or delayed.

d) **Power of Attorney**. In connection with any financing necessary for the construction, operation or maintenance of the System, the Town hereby grants SSRERI power of attorney solely for the limited purpose of executing a collateral assignment of this Lease and/or a Security Interest in connection with said 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 (i) if such breach can be cured within thirty (30) days after Lessor’s notice of such breach and Lessee fails to cure within such thirty (30)-day period, or if such breach cannot reasonably be cured within such thirty (30)-day period despite Lessee’s prompt commencement and diligent pursuit of a cure, if (ii) Lessee 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. SSRERI fails to make any payments to Lessor required by this Lease, and such failure is not cured within fifteen (15) days, except that if such failure occurs more than three times in any 365-day period, such occurrence shall constitute an event of default irrespective of whether one or more of such failures have been cured within the period stated in this clause;
- iii. SSRERI becomes Bankrupt;
- iv. SSRERI fails to obtain any bonds and insurance required by this Lease, unless such failure is cured within fifteen (15) days, provided also that no damage 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 Lessee any undisputed amount due Lessee under this Lease within thirty (30) days from receipt of written notice from Lessee of such past due amount;
 - ii. Lessor breaches any material term of this Lease if (a) such breach can be cured within thirty (30) days after Lessee’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; or
 - iii. Lessor becomes Bankrupt.
 - c) Remedies. If an Event of Default has occurred and, where a cure period is provided above, is not cured within the cure period provided for, 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 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.
 - i. In the event that SSRERI terminates this Lease because of Lessor’s default hereunder, SSRERI’s obligation to pay any further rent shall cease and Lessor shall repay SSRERI any prepaid rent paid pursuant to this Lease, and SSRERI shall have right to pursue any and all remedies available to it at law and/or equity. Lessor agrees to reimburse SSRERI for all costs associated with the enforcement of SSRERI’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 SSRERI’s rights and remedies hereunder, and in addition to all other amounts Lessor is otherwise obligated to pay, it is expressly agreed that SSRERI shall be entitled to recover from Lessor all costs and expenses, including reasonable attorneys’ fees, incurred by SSRERI in enforcing this Lease from and after Lessor’s default.
 - ii. 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 the SSRERI’s other effects on the Premises shall be removed consistent with the provision of this Lease. SSRERI 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, and in addition to all other amounts SSRERI is otherwise obligated to pay, it is expressly agreed that Lessor shall be entitled to recover from SSRERI all costs and expenses, including reasonable attorneys’ fees, incurred by Lessor in enforcing this Lease from and after SSRERI’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 SSRERI: Southern Sky Renewable Energy Rhode Island, LLC
Attn. Managing Member
117 Metro Center Blvd – Suite 2007
Warwick, RI 02886
Email:
Fax:

with a copy to: Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
Attention:
Email:

To the Town: Office of Town Manager
Town Hall

[Insert Contact info]

With a Copy to: [Insert Name and Contact Info]

To Lessor: [Insert name and contact info]

With a Copy to: [Insert Name and Contact Info]

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 act or event that prevents the affected Party from performing its obligations in accordance with this Lease, if such act or event is beyond the reasonable control, and not the result of the fault of the affected Party, and such Party was unable to overcome such act or event with the exercise of reasonable diligence. 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 ninety (90) 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 SSRERI’s obligation to remove the System in accordance with Sections herein 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 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, 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. Lessor shall act expeditiously, cooperatively and in good faith in facilitating any amendments to this Lease requested by Lender in connection with the financing of the System.
 - 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 SSRERI 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 [Enter Name of Agreement] 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 SSRERI's obligations under this Lease; (iii) Lender and/or any proposed assignee shall have satisfied every obligation of SSRERI 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 SSRERI, 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 SSRERI and SSRERI 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 SSRERI has failed to cure such default and such Lender shall have sixty (60) days after such additional notice to cure any such default or, if such default cannot be cured within sixty (60) days, to diligently commence curing within such time and diligently pursue such cure to completion within such time as SSRERI would have been allowed pursuant to the terms of this Lease but as measured from the date of such additional notice. 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 _____ (or any subsidiary or Affiliate of _____) that are not incurred for the ownership, construction, maintenance, operation, repair or financing of the System.
- e) Priority in Payment. The Lender shall have priority over Lessor with respect to payments owed by SSRERI.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK-
SIGNATURE PAGE APPEAR ON NEXT PAGE]**

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year of the last party to sign below (the “*Effective Date*”).

LESSOR:
[Insert Name]

By: _____
Name:
Title:

LESSEES:

SOUTHERN SKY RENEWABLE ENERGY
RHODE ISLAND, LLC [or project entity to be
formed]

By: _____
Name: [Insert Name]
Title: Managing Manager

THE TOWN

By: _____
Name: [Insert Name]
Title: [Insert Title]

EXHIBIT A
DESCRIPTION OF PREMISES

Legal description of the Premises including a parcel map and/or an abstract of survey if available.

“Premises” means the approximately (insert #+/-) acre portion of the Property, known as [insert name] in Town/City , Rhode Island or another City or Town located in Rhode Island together with such easements and access rights, all as generally depicted in and, subject to the provisions of this Lease which Property is referred to below as:

[ATTACH LEGAL DESCRIPTION OF PREMISES]

EXHIBIT B
DEFINITIONS

“Affiliate” means, with respect to any Person, 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 SSRERI 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.

“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 and is ready for regular, daily operation, and has been interconnected to the Local Electric Utility and the Local Electric Utility has issued the Permission to Operate the System to Lessee.

“Commercial Operations Date” means the date on which any System is ready for commercial operations after required testing and the Local Electric Utility has issued to Lessee the Permission to Operate the System.

“Construction Commencement Date” is the date on which Lessee shall have obtained all Governmental Approvals required by any Governmental Authority as a condition precedent to the commencement of installation and construction of or related to the System at the Premises.

“Effective Date” has the meaning set forth in the preamble hereof.

“Environmental Attributes” means all products of the System including but not limited to carbon trading credits, renewable energy certificate (“RECs”), 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 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.

“Force Majeure Event” has the meaning set forth in the 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.

“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.

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

“Lessee” means the Lessee, its Affiliates and any of their authorized representatives, agents, employees, managers, contractors, architects and engineers, and each of their respective officers, directors, partners, members, managers, agents, employees, representatives and invitees.

“Lessor means Lessor, its Affiliates and any of their authorized representatives, agents, employees, managers and each of their respective officers, directors, partners, members, managers, agents, employees, and representatives.

“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.

“Rebates” shall mean any and all Governmental Authority or utility rebates or other funding offered for the development of photovoltaic systems but does not include grants or benefits for which only a governmental entity is eligible as determined by and under Applicable Law.

“Removal and Restoration Date” means the date not be later than one hundred twenty (120) days after the expiration or earlier termination of this Lease, when SSRERI shall complete removal from the Premises of the System and all of SSRERI’s property, including, but not limited to, all equipment and components comprising the System.

“System” or “Systems” means a solar photovoltaic facility having a capacity of up to approximately [Insert Project Specific Info] (“MW”) DC to be installed by SSRERI 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.

**EXHIBIT C
LESSEE INSURANCE**

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EXHIBIT D

LESSOR CONSENT AND ESTOPPEL CERTIFICATE

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EXHIBIT E

LESSOR CONSENT AND ESTOPPEL CERTIFICATE

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DIVIDER PAGE

EASEMENT AGREEMENT

This SOLAR POWER EASEMENT AGREEMENT (the “Easement Agreement”) is made and entered into as of this ____ day of _____, 2017, by and between [Insert entity], a Rhode Island limited liability company with a principal office at (hereinafter referred to as “[Insert entity]”) and the Town of [Insert name of Town] with a principle place of business located at, (hereinafter referred to as the “Town”).

WHEREAS, [Insert entity] is in the business of developing, installing, owning and operating solar photovoltaic systems (the “Facility”); and

WHEREAS, [Insert entity] is the owner of the real property more particularly described in the attached **Exhibit A** (the “Property”) and has the exclusive right to develop, design, engineer, access, construct, monitor, install, own, maintain and operate the Facility to be located on the Property; and

WHEREAS, [Insert entity] plans to construct the Facility with an aggregate generating capacity of up to approximately [Insert wattage amount] at the Property (the “Project”); and

WHEREAS, the Project will enable the Town to benefit from a Public Entity Net Metering Financing Arrangement with [Insert entity] pursuant to which the Town will purchase net metering credits to be applied against the Town’s electrical expense; and

WHEREAS, in order to enable the Town to benefit from power generated by the Project in compliance with the laws and regulations governing Public Entity Net Metering Financing Arrangement (currently, RIPUC Bo. 2150 and RIGL 39-26.4-2), [Insert entity] and the Town wish to enter into this Easement Agreement which shall provide the Town with control over the Property on which the solar Facility will be located, on the terms and conditions set forth herein.

NOW THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration to which the parties acknowledge receipt of, the parties agree as follows:

1. **Grant of Easement.** [Insert entity] hereby grants to the Town, its successors and assigns an easement on the Property for the express purpose of exercising control over the Property in connection with the operation of the solar Facility. The Town’s rights and obligations shall be governed by the terms of a Public Entity Net Metering Financing Arrangement between the Town and [Insert entity], dated _____ (the “PENMFA”). A Memorandum of the PENMFA is annexed hereto as **Exhibit B.**
2. **Runs with the Land.** This Easement will run and bind the Property, and will inure to the benefit of and be binding on the Owner and the Town as applicable, and their respective heirs, personal representatives, transferees, successors and assigns, and all persons claiming under them.

3. Term. The term of this Easement (“Term”) shall be co-terminus with the PENMFA between [Insert entity] and the Town, which agreement provides for a term of years commencing _____, subject to [Insert entity]’s right to extend the Term for additional periods of one (1) year each (“Renewal Period”) as set forth in the PENMFA.
4. Solar Facility. [Insert entity] shall, at its sole cost and expense, install and maintain the Facility upon, under and over the Property in the location described in **Exhibit C** (“Easement Area”).
5. Taxation. [Insert entity] will be solely responsible for and bear the expenses of any taxes assessed and levied against the Property, including without limitation the personal property installed on the Property.
6. Ownership and Operation of the Facility. The Facility will be owned, operated and maintained exclusively by [Insert entity] and its contractors, vendors, successors or assigns. All energy, including capacity, generated by the Facility shall remain the sole and exclusive property of [Insert entity] subject to the Town’s right to purchase net metering credits pursuant to the PENMFA. The Town shall have no right of access to the Property unless set forth in the PENMFA.
7. Maintenance and Responsibility for the Facility. [Insert entity] shall, at its sole cost and expense, inspect, clean, maintain, repair the Facility at intervals determined by [Insert entity] to be necessary or desirable as set forth in the PENMFA.
8. Easement Area. The Easement Area described and identified in **Exhibit C**, is the anticipated location of the Easement Area. The Town agrees that [Insert entity] may in the future prepare an as-built survey depicting the actual location of the Facility and the final Easement Area and that this Easement Agreement will thereafter be amended by the Town and [Insert entity] to substitute **Exhibit C-Revised** in place of **Exhibit C** annexed hereto.
9. Ownership. The Facility and all alterations, additions, improvements or installations made thereto by [Insert entity] and all personal property of [Insert entity] used in connection with the installation, operation and maintenance of the Facility, electric lines, ducts or other apparatus related to the Facility are, and shall be and remain, the personal property of [Insert entity] (“Property”) as set forth in the PENMFA.
10. Termination of Agreement. This Easement shall terminate automatically upon termination or expiration of the PENMFA between [Insert entity] and the Town. Upon termination or expiration of the PENMFA, [Insert entity] shall have the unilateral right to record a Notice of Termination of Easement in the Land Evidence Records for the Town [Insert Town]. Said Notice of Termination may be executed unilaterally by [Insert entity] and shall be effective to terminate this Easement Agreement. Upon termination of this Easement Agreement, neither party shall have any further rights hereunder.

11. Sale, Transfer, Lease of Property. In the event of [Insert entity]’s sale, transfer or lease of the Property, the purchaser, transferee or lessee of the Property shall be bound by this Easement Agreement, it being the intent of the parties that this Easement Agreement shall be binding upon and inure to the benefit of the parties’ successors and assigns, and that the covenants contained herein shall run with the land. The Town agrees not to record a notice or memorandum of this Easement Agreement in the Land Evidence Records.
12. Force Majeure. Neither party hereto shall be liable to the other for any failure of performance due to causes beyond its reasonable control, the occurrence of which could not have been prevented by the exercise of due diligence (“Force Majeure”), such as acts of God, acts of the other party, acts of civil or military authority, fires, floods, earthquakes, epidemics, windstorms, explosions, natural disasters, sabotage, wars, riots, strikes, work stoppages, labor disputes, or changes in laws or regulations; provided, however, that written notice of such Force Majeure event (including the anticipated duration of the delay caused by a Force Majeure event) shall be given by the affected party to the other party as soon as possible after the event or occurrence (but in no event more than thirty (30) days thereafter).
13. Assignment; Change of Control.
 - a. Assignment by Town. The Town may not assign its rights and obligations under this Easement Agreement to any third-party without [Insert entity]’s prior written consent.
 - b. Assignment by [Insert entity]. [Insert entity] may assign or transfer its rights and obligations under this Agreement without the prior consent of the Town for the following reasons: (i) as collateral for financing necessary for the construction, operation or maintenance of the Facility; (ii) in connection with any merger, consolidation or sale of substantially all of the assets or equity interests of [Insert entity] or any change in ownership more than fifty percent (50%) of the voting capital stock of a party in one or more related transactions. Upon the request of [Insert entity] or its lender, the Town shall execute a consent and agreement in a form reasonably requested by [Insert entity] or its lender. Such consent is not to be unreasonably withheld, conditioned or delayed.
14. Insurance. [Insert entity] at its own cost and expense, shall obtain **Commercial General Liability Coverage** (Occurrence Form) with limits of not less than \$_____ each occurrence, on which policy the Town shall be added as an additional insured. [Insert entity] shall furnish to the Town a certificate of the insurance specified herein at the commencement of this Easement Agreement. Said certificates shall name the Town as an insured on the policy and shall cover the entire scope of the Town’s and [Insert entity]’s use of the Property.
15. Indemnity.
 - a. [Insert entity] shall indemnify, defend and hold harmless the Town, its agents and employees, from and against any and all liabilities; obligations; damages (other

than consequential damages); penalties; claims; costs; damages or injuries to the personnel, equipment of the Town including its employees, agents, contractors or subcontractors within the Property; charges; losses and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by or asserted against the Town, its agents or employees, by reason of the negligent actions or omissions or willful misconduct of [Insert entity] or its agents, employees, contractors, or subcontractors in connection with the [Insert entity]’s activities at the Property.

16. No Consequential Damages. Except as expressly set forth herein, neither party hereto shall be responsible to the other for incidental, indirect, or consequential damages, including, but not limited to, loss of profits or revenue.
17. Governing Law. This Easement Agreement shall be governed and shall be interpreted in accordance with the laws of the State of Rhode Island.
18. Severability. Should any provision of this Easement Agreement be or become invalid, ineffective or unenforceable in whole or in part, the validity, effectiveness and enforceability of the remaining provisions shall not be affected.
19. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, by means of an overnight courier service, by facsimile to the address set forth below, by email with confirmation of receipt or such other address as a Party shall designate by written notice in the manner set forth herein, and shall be deemed received upon the earlier of (i) if mailed, two (2) business days after the 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 deliver 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 send of a specific acknowledgement by the recipient (automatic responses not being sufficient for acknowledgement).

If to [Insert entity]:

[Insert contact information]

With a copy to:

[Insert name and contact information]

If to the Town:

[Insert name and contact information]

With a copy to:
[Insert name and contact information]

20. Counterparts. This Easement Agreement may be executed in one (1) or more counterparts, and all the counterparts shall constitute but one (1) and the same Easement Agreement, notwithstanding that all parties hereto are not signatory to the same or original counterpart.
21. Non Waiver. Unless otherwise expressly provided in this Easement Agreement, no waiver by the Town or [Insert entity] of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Town or [Insert entity], as the case may be. No delay or omission in the exercise of any right or remedy accruing to the Town or [Insert entity], as the case may be, upon any breach under this Easement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by the Town or [Insert entity] of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.
22. Exhibits. All Exhibits attached hereto shall be incorporated herein by reference as if set out herein in full.
23. Entire Agreement. This Agreement, together with all schedules and exhibits attached hereto or mentioned herein, shall constitute the entire Agreement between the parties and may not be amended, modified or terminated except by a writing signed by the Parties hereto. This Agreement and the Schedules hereto wholly supersede any and all oral statements, representations or agreements made by the Parties to this Easement Agreement. This Agreement shall become binding when executed by the Town and [Insert entity].
24. Construction of Agreement. This Agreement is the product of negotiations between the Parties and shall not be construed as being drafted by one Party as opposed to the other.

[Remainder of Page Intentionally Left Blank – Signatures Appear on Next Page]

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

The Town of _____
By: _____
Name:
Title:

[Insert entity name]
By: _____
Title: Manager

STATE OF RHODE ISLAND
COUNTY OF [Insert name of county]

In _____, in _____ County in the State of Rhode Island, on the _____ day of _____ 2017, before me personally appeared _____, to me known and known by me to be the party executing the foregoing instrument for and on behalf of The Town of _____ and he/she acknowledged said instrument by him/her executed to be his/her free act and deed, his free act and deed in his/her capacity as aforesaid, and the free act and deed of the Town of _____.

Notary Public
My Commission Expires: _____

STATE OF RHODE ISLAND
COUNTY OF [Insert name of county]

In _____, in _____ County in the State of Rhode Island, on the _____ day of _____ 2017, before me personally appeared [Insert name], to me known and known by me to be the party executing the foregoing instrument for and on behalf of [Insert entity] and he/she acknowledged said instrument by him/her executed to be his free act and deed, his free act and deed in his capacity as aforesaid, and the free act and deed of [Insert entity].

Notary Public
My Commission Expires: _____

EXHIBIT A

(The Property)

Legal description of the Property including a parcel map and/or abstract of survey if available

“Property” means the approximately ___ acres of the property, located in the Town of _____, Rhode Island as generally depicted herein and referred to as Lot ____ on the Town of _____ Assessors Plat Map _____.

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EXHIBIT B

**MEMORANDUM OF PUBLIC ENTITY NET METERING FINANCING
ARRANGEMENT**

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EXHIBIT C

(The Easement Area)

Legal description of the Easement Area including a parcel map and/or abstract of survey if available.

“Site” means the approximately the +/- ____ acres described as Easement Area.

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