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Norton Selectman's Office

AGREEMENT FOR PAYMENT IN LIEU OF TAXES
FOR REAL AND PERSONAL PROPERTY

between

Town of Norton, Massachusetts

and

Norton Solar II LLC

dated as of 7-18-16, 2016

AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR
REAL AND PERSONAL PROPERTY

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR REAL AND PERSONAL PROPERTY (this "Agreement") is made and entered into as of the date written on the cover page, above, by and between Norton Solar II LLC ("Developer"), a Massachusetts limited liability company, and the Town of Norton, Massachusetts, a municipal corporation duly established by law and located in Bristol County, Commonwealth of Massachusetts (the "Town"). Developer and the Town are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party".

WHEREAS, Developer is a "generation company" engaged in the business of producing, manufacturing or generating electricity or related services or products, including but not limited to, renewable energy generation attributes for retail sale to the public, or a "wholesale generation company" engaged in the business of producing, manufacturing or generating electricity for sale at wholesale only, as such terms are used and defined in the Massachusetts General Law Chapters 59, §38H(b), and 164, §1;

WHEREAS, Developer plans to build and operate a photovoltaic power plant (the "Project") with an expected nameplate capacity ("Capacity") of approximately 495 megawatts AC and 650 megawatts DC, subject to final engineering, on a parcel of land located at 36 Clapp Street, Norton, Bristol County, Massachusetts, as more particularly shown in Exhibit A (the "Land") with an expected Completion Date of December 31, 2016.

WHEREAS, it is the intention of the Parties that Developer make annual payments to the Town for the term of this Agreement in lieu of real and personal property taxes on the Project and Land, in accordance with G.L. c.59, §38H(b) (Acts of 1997 Chapter 164, Section 71(b), as amended) and other applicable laws and regulations, including the regulations of the Massachusetts Department of Revenue adopted in connection therewith;

WHEREAS, because both Developer and the Town need an accurate projection of their respective expenses and revenues with respect to the real and personal property that is taxable under law as a result of the Project, the Parties believe that it is in their mutual best interests to enter into this Agreement fixing the payments that will be made with respect to all taxable real and personal property incorporated within the Project for the term of this Agreement;

WHEREAS, the Parties intend that, during the term of this Agreement, Developer will not be assessed for any statutory real and personal property taxes to which it might otherwise be subjected under Massachusetts law with respect to the Project and Land, and this Agreement will provide for the exclusive payments in lieu of such real and personal

property taxes that Developer (or any successor owner of the Project) will be obligated to make to the Town with respect to the Project and Land during the term hereof, provided, however, that the Parties do not intend for this Agreement to affect any other taxes and payments that may be owed to the Town by Developer; nor do the Parties intend for this Agreement to affect any direct payments for services provided by the Town to the Project, including but not limited to, water and sewer services (if applicable), betterment assessments and similar payment obligations not in the nature of real and personal property taxes or substitutes for such taxes that Developer is otherwise obligated to pay the Town;

WHEREAS, the Town is authorized to enter into this Agreement with Developer, provided the payments in lieu of real and personal property taxes over the life of this Agreement are expected at inception to approximate the real and personal property tax payments that would otherwise be determined under G.L. c.59 based upon the full and fair cash valuation of the Project and Land; and provided Developer, throughout the term hereof, qualifies as a “generation company” or “wholesale generation company”; and

NOW THEREFORE, in exchange for the mutual commitments set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Payment in Lieu of Real and Personal Property Taxes. Developer agrees to make annual payments to the Town in lieu of real and personal property taxes for the Project and Land for a period of twenty (20) consecutive fiscal tax years. Such 20-year term shall commence 180 days from the date on which a building permit is issued for the Project by the Norton Building Department (the “Commencement Date”), and shall end the twentieth fiscal year following the Commercial Operations Date. The first annual payment shall be in the amount of \$15.15 per kilowatt (AC) of Capacity. Thereafter annual payments will escalate by two percent (2.0%) per year. Assuming a Capacity of 495 kilowatts (AC), annual payments to be made by Developer during the term of this Agreement shall be as listed in Exhibit B. Each annual payment will be paid to the Town in four (4) equal (or, in the Town’s discretion but only if the Town issues a bill to Developer, slightly unequal) quarterly installments on or before August 1, November 1, February 1 and May 1 of each fiscal tax year during the term of this Agreement; and the annual payment amount and payment date will be noted on a semi-annual bill issued by the Town to the Developer, provided that any failure of the Town to issue such a bill shall not relieve Developer of its obligation to make timely, equal quarterly payments under this section. Annual payments for partial fiscal years shall be prorated.

Developer agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor or reduction in the Town's tax rate, and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor or increase in the Town's tax rate, all of which factors have been

considered in arriving at the payment amounts reflected in this Agreement.

2. Change in Capacity at Mechanical Completion: Adjustments to Payments. To the extent that the Capacity of the Project is more than 495 kilowatts AC on the date when the Project is mechanically complete and Developer has filed its Certificate of Completion (or similar documentation) for the Project with the local electric utility (the "Completion Date"), the payments set forth in Exhibit B will be increased at a rate of \$15.15 per kilowatt (AC) of increase. To the extent that Capacity of the Project, on the Completion Date, is less than 495 kilowatts AC, such payments will be decreased at a rate of \$15.15 per kilowatt (AC) of decrease. No later than thirty (30) days after the Completion Date, and in all events before the Commercial Operations Date, Developer shall provide the Town with written notice certifying the Capacity of the Project together with an Annual Inventory Update, as defined in Section 4, below.

3. Change in Capacity After Mechanical Completion: Adjustments to Payments. If after the Completion Date the AC Capacity or DC Capacity is increased as a result of the replacement of existing Project equipment or property or the addition of new Project equipment or property, the annual payments set forth in Exhibit B shall be increased at a rate of \$15.00 for each kilowatt increase in AC Capacity or at a rate of \$ 11.42 for each kilowatt increase in DC Capacity. If both the AC Capacity and DC Capacity are increased as a result of the addition or replacement of the same Project equipment or property, the rate (DC or AC) resulting in the largest increase to annual payments shall be used to increase payments set forth in Exhibit B.

4. Inventory and Inspection.

a. Inventory. Attached to this Agreement as Exhibit C is a preliminary, itemized inventory prepared by Developer (the "Inventory") of the improvements, equipment and other property anticipated to be incorporated in the Project, together with fair market values for each improvement and item of equipment or property, along with the estimated Project Capacity (DC and AC) of the Project, and estimated annual production of electricity (in kilowatt hours) to be generated by the Project. Only property necessary or incidental to the production of electricity shall be included in the Project. [Notwithstanding anything to the contrary in this Agreement, the Project, and thus the annual payments hereunder, shall not include (i) buildings or, (ii) excluding the Project, fixtures constituting "Real Property," as defined in M.G.L. c. 59, § 2A(a).]Developer will update the Inventory annually as of January 1 of each year and such updated Inventory, referred to as an "Annual Inventory Update," will be provided to the Town on or before February 1 of each year and as otherwise required in Section 2, above. In addition, the Developer shall, upon signing this Agreement, provide the Town with a copy of Developer's interconnection application filed with the local electric utility (or if such application has not been filed, within fourteen (14) days after it is filed), and a copy

of its interconnection agreement with such utility within fourteen (14) days after it has been signed by the utility and Developer. Developer shall also provide the Town any future amendments to such application or interconnection agreement within fourteen (14) days after the amendments to the application are filed by the Developer and the amendments to the interconnection agreement are signed by the utility and Developer.

b. Inspection. The Town, its officers, agents, employees, consultants and attorneys will have the right to periodically inspect the Project and meters used to measure the energy generated by the Project on reasonable prior notice to Developer (in any event, not less than two business days notice) for the purpose of confirming and verifying Project Capacity and Developer's compliance with this Agreement. During any such inspection, the Town shall comply with all reasonable Developer safety requirements.

5. Town Expenses. Developer shall pay \$1,000.00 to the Town for the legal costs associated with this Agreement. Such payment shall be made ten (10) days after the execution of this Agreement.

6. Payment Collection. All rights and remedies available to the Town for the collection of taxes shall apply to the payments in lieu of taxes hereunder, including, but not limited to, the rights and remedies provided in G.L. c.59 and G.L. c.60, and all such rights and remedies are hereby reserved notwithstanding anything to the contrary herein. The provisions of the General Laws, including but not limited to G.L. c.59 and G.L. c.60, will govern the establishment of liens and the collection of any payments in lieu of taxes provided for in this Agreement as though said payments were real and personal property taxes due and payable to the Town. If and to the extent deemed necessary by the Town for assessment or collection of Annual Payments, the Project may, at the Town's election, be deemed (i) personal property unintentionally omitted from annual assessment under G.L. c. 59, § 75, or (ii) "Real Property" as defined in G.L. c. 59, § 2A(a). All late payments shall accrue interest at 14 percent per annum. Furthermore, if Developer breaches its payment obligations under this Agreement, Developer shall pay the reasonable attorneys' fees, court and other costs incurred by the Town in the collection of the unpaid amounts.

7. Tax Status, Separate Tax Lot. The Town agrees that during the term of this Agreement, the Town will not assess Developer for any real or personal property taxes with respect to the Project and Land to which Developer might otherwise be subject under Massachusetts law, and the Town agrees that this Agreement will exclusively govern the payments of all such taxes, provided, however, that this Agreement is not intended to affect, and will not preclude the Town from assessing, any other taxes, fees, charges, rates or assessments which the Developer is obligated to pay, including, but not limited to, real or personal property taxes (excluding any such taxes attributable to the

Project and Land), excise taxes, betterments, fees, or charges for services provided by the Town to the Project, including but not limited to, water and sewer services.

8. Assignments Require Prior Notice. This Agreement may not be assigned by Developer without the prior written consent of the Town and such consent may not be unreasonably withheld; provided, however, that Developer may, with advance written notice to the Town and without prior consent, assign its payment obligations under this Agreement to an affiliate of Developer or to any party who has provided or is providing financing to Developer for the construction, operation and/or maintenance of the Project, provided, further, however, that, notwithstanding any such assignment, Developer shall remain responsible to the Town for all payments due the Town under this Agreement. If Developer is permitted to otherwise assign this Agreement with the advance written consent of the Town, the Developer shall be released from all obligations under this Agreement upon assumption hereof in writing by the assignee, provided that Developer shall, as a condition of such assignment and to the reasonable satisfaction of the Town, cure any defaults and satisfy all liabilities arising under this Agreement prior to the date of such assignment. A Notice of this Agreement may be recorded by Developer in the applicable Registry of Deeds.

9. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement were negotiated in good faith in recognition of and with due consideration of the full and fair cash value of the Project and Land, to the extent that such value is determinable as of the date of this Agreement in accordance with G.L. c.59, §38H. Each Party was represented by counsel in the negotiation and preparation of this Agreement and has entered into this Agreement after full and due consideration and with the advice of its counsel and its independent consultants. The Parties further acknowledge that this Agreement is fair and mutually beneficial to them because it reduces the likelihood of future disputes over real and personal property taxes, establishes tax and economic stability at a time of continuing transition and economic uncertainty in the electric utility industry in Massachusetts and the region, and fixes and maintains mutually acceptable, reasonable and accurate payments in lieu of taxes for the Project and Land that are appropriate and serve their respective interests. The Town acknowledges that this Agreement is beneficial to it because it will result in acceptable, regular, predictable, accurate and reasonable payments in lieu of taxes to the Town. Developer acknowledges that this Agreement is beneficial to it because it will result in acceptable, regular, predictable, accurate and reasonable payments in lieu of taxes for the Project and Land.

10. Additional Documentation and Actions. Subject to applicable laws and regulations, each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such reasonable additional instruments and documents as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement. Developer shall pay all reasonable attorneys' and

consulting fees incurred by the Town to review and negotiate any such instruments or documents.

11. Notices. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service, by hand, or by certified mail, return receipt requested. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

If to Developer:
Norton Solar II LLC
23 Grasshopper Lane
Acton, MA 01720

With a copy to:

Jonathan Klavens
Klavens Law Group
420 Boylston
Suite 610
Boston, MA 02116

If to Town:
Attn: Town Manager and Board of Selectmen
Town of Norton
70 East Main Street
Norton, MA 02766

With a copy to:

Board of Assessor
Town of Norton
70 East Main Street
Norton, MA 02766

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

12. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of The Commonwealth of Massachusetts. Developer and the Town each consent to the jurisdiction of the Massachusetts courts or other applicable

agencies of The Commonwealth of Massachusetts regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Accordingly, any litigation arising hereunder shall be brought solely in such courts. Developer agrees that service of process may be made upon it by serving process in person or by certified mail at the addresses for Developer indicated in Section 11 for Notices, and that any service so made shall not be challenged by Developer.

13. Good Faith. The Town and Developer shall act in good faith to carry out and implement this Agreement and to resolve any disputes between them.

14. Force Majeure. The Developer and Town both recognize that there is the possibility during the term of this Agreement that all or a portion of the Property or Project may be damaged or destroyed or otherwise rendered unusable due to events beyond the control of either Party. These events are referred to as "Force Majeure". As used herein, Force Majeure includes, without limitation, the following events:

- a. Acts of God including floods, winds, storms, earthquake, fire or other natural calamity;
- b. Acts of War or other civil insurrection or terrorism; or
- c. Taking by eminent domain by any governmental entity of all or a portion of the Land or the Project.

In the event an event of Force Majeure occurs during the term of this Agreement that damages or destroys all or any portion of the Project and that renders all or a portion of the Project unusable for the customary purpose of the production of electricity for a consecutive period of more than one hundred twenty (120) days, then Developer may, at its election, notify the Town of the existence of this condition as well as of its decision whether or not to repair all or that portion of the Project that has been damaged or destroyed.

If Developer elects not to repair the Project or the damaged or destroyed portions thereof, it may notify the Town of its termination of this Agreement, provided that Developer shall continue to timely make all payments required hereunder until such time as the Project or the damaged or destroyed portions thereof have been removed from the Land. Except as set forth in the preceding sentence, Developer shall continue to timely make all payments required hereunder without reduction or abatement.

15. Covenants/Warranties of Developer.

1. During the term of this Agreement, Developer will not voluntarily do any of the following:

- a. seek to invalidate this Agreement;
- b. convey by sale, lease or otherwise any interest in the Project to any entity or organization that qualifies as a charitable organization pursuant to M.G.L. c.59, Section 5 (Third);
- c. fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement; or
- d. seek, for any reason, an abatement or reduction of any of the amounts assessed in accordance with the terms of this Agreement, except as may be expressly provided herein.

2. Developer represents and warrants:

- a. It is a corporation or other business entity duly organized, validly existing and in good standing under the laws of the state in which it was formed, and if a foreign corporation or entity, is, to the full extent required by law or regulation, registered with the Massachusetts Secretary of State or other agency, and has full power and authority to carry on its business as it is now being conducted.
- b. This Agreement constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting enforcement of creditors' rights generally or by general equitable principles.
- c. It has taken all necessary action to authorize and approve the execution and delivery of this Agreement.
- d. The person executing this Agreement on behalf of Developer has the full power and authority to bind it to each and every provision of this Agreement.
- e. Developer is a "generation company" or "wholesale generation company" as those terms are used and defined in G.L. c.59, §38H(b) and G.L. c. 164, §1.
- f. Developer is not a "manufacturing corporation" or "limited liability company engaged in manufacturing" under G.L. c. 59, §5(16)(3).

16. Covenants of the Town. During the term of this Agreement, the Town will not do any of the following:

a. except as stated in or permitted by this Agreement, seek to assess any real or personal property tax for the Project in addition to the amounts paid by Developer herein;

17. Invalidity of Agreement. Developer and the Town understand and agree that this Agreement shall be void and that no portion of this Agreement shall be enforceable, if this Agreement, or any material portion of this Agreement, is determined or declared by a court or state agency of competent jurisdiction to be illegal, void, or unenforceable; or (b) Developer or its assignee, if any, is determined or declared by a court or state agency of competent jurisdiction not a “generation company” or “wholesale generation company” as those terms are used or defined in G.L. c. 59, §38H (b), and G.L. c. 164, §1.

18. Termination by Either Party. Notwithstanding anything to the contrary herein, this Agreement may be terminated by either Party upon notice to the other Party in accordance with the provisions of Section 11 if: (i) this Agreement is not approved by the Town acting by affirmative votes of its Town Meeting and Board of Selectmen on or before November 31, 2016; or (ii) the Completion Date has not occurred on or before December 31, 2016, or any other date upon which the Parties may agree in writing.

14. Additional Termination Rights of Town. Notwithstanding anything to the contrary in this Agreement, the Town may terminate this Agreement on thirty (30) days written notice to Developer if:

a. Developer fails to make timely payments required under this Agreement, unless such payment is received by the Town within the 30-day notice period with interest as stated in this Agreement, provided, however, that the Town may nonetheless terminate this Agreement if such failure occurs more than three times in any rolling 365-day period, even if each such failure is cured within the 30-day notice period;

b. Developer has filed, or has had filed against it, a petition in Bankruptcy, or is otherwise insolvent;

c. Developer otherwise materially breaches this Agreement, unless such breach is cured within the 30-day notice period, including payment to the Town of any damages arising from such breach, provided, however, that the Town may nonetheless terminate this Agreement if Developer materially breaches this Agreement more than three times in any rolling 365-day period, even if each such breach is cured within the 30-day notice period; and/or

d. Developer’s representations set forth in Section 15 were untrue,

inaccurate, or incomplete in material respects at the time they were made.

15. Certification of Tax Compliance. Pursuant to G.L. c. 62C, § 49A, Developer by its duly authorized representative, certifies under pains and penalties of perjury that it has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

16. Entire Agreement. The Parties agree that this is the entire, fully integrated Agreement between them with respect to payments in lieu of taxes for the Land and Project, and that there are no third party beneficiaries to this Agreement.

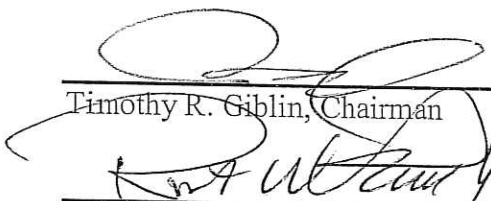
Executed under seal by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

Norton Solar II LLC

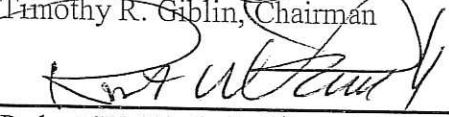
By: 
Name: BRETT D. CHAPMAN
Title: MANAGER

Date: 7-18-16

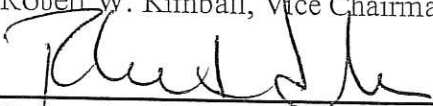
TOWN OF NORTON



Timothy R. Giblin, Chairman

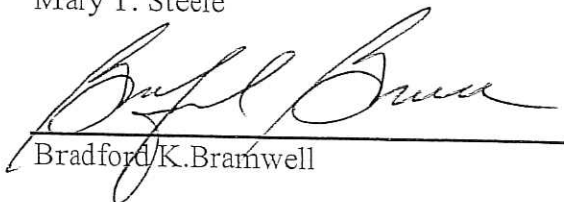


Robert W. Kimball, Vice Chairman



Robert S. Salvo, Sr., Clerk

Mary T. Steele



Bradford K. Bramwell

7-14-2016

Date

EXHIBIT A

Description of Land

“Land” means the real property of Lessor located at:

- Address 36_Clapp St, Street, Norton, MA 02766
- See the deed attached as hereto for the legal description of the Land.

I, Mary Jane Farquhar
of 36 Clapp Street, Norton, MA 02766

for consideration paid of FIVE HUNDRED FIFTY THOUSAND 00/100 (\$550,000.00)
DOLLARS

grant to Wheaton College, a Massachusetts not-for-profit corporation having an address
of 26 East Main Street, Norton, MA 02766

with quitclaim covenants

The land in said Norton, with all buildings thereon, on the easterly side of Clapp Street, containing 11 3/4 acres more or less, bounded and described as follows: Beginning on said road, a corner of land formerly of one Arnold; thence running on said road to the end of a lane and land formerly of Charles A. Clapp; thence turning and running on the lane past the end of a barn as the wall now stands to a corner thereof; thence turning and running on said lane and said Clapp land by the wall to corner thereof; thence turning and running on said Clapp land by the wall as it now stands to said Arnold land; thence on said Arnold land, as the wall now stands, to said street and the point of beginning.


Said premises are shown on a plan entitled: "Land Owned by Mary Jane Farquhar in Norton, Massachusetts, E. Otis Dyer, R.P.L.S. Rehoboth, Mass., Scale 1" = 50', December 18, 2000", which plan is recorded at Bristol County Northern District Registry of Deeds at Plan Book 395, Page 6.

Being the same premises conveyed to Norman D. Farquhar and Mary Jane Farquhar by deed of James H. O'Leary, dated March 28, 1952 and recorded at Bristol County Northern District Registry of Deeds at Book 1060, Page 146-147. Norman D. Farquhar died August 10, 1989.

PROPERTY LOCATION: 36 CLAPP STREET, NORTON, MA

Witness my hand and seal this fifth day of May, 2003.

Mary Jane Farquhar
Mary Jane Farquhar


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DEEDS REG 6
BRISTOL NOR
CANCELLED

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FEE \$2508.00

CASH \$2508.00

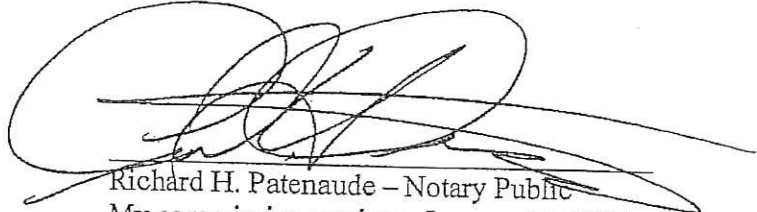
Map 23 Rev 70

Bristol, SS.

Commonwealth of Massachusetts

May 5, 2003

Then personally appeared the above named Mary Jane Farquhar and acknowledged the foregoing instrument to be her free act and deed before me,



Richard H. Patenaude - Notary Public
My commission expires: January 17, 2008

Exhibit B

<u>Fiscal Tax Year</u>	<u>Annual Payment*</u>
2017	\$ 7,500.00
2018	\$ 7,650.00
2019	\$ 7,803.00
2020	\$ 7,959.06
2021	\$ 8,118.24
2022	\$ 8,280.61
2023	\$ 8,446.22
2024	\$ 8,615.14
2025	\$ 8,787.45
2026	\$ 8,963.19
2027	\$ 9,142.46
2028	\$ 9,325.31
2029	\$ 9,511.81
2030	\$ 9,702.05
2031	\$ 9,896.09
2032	\$ 10,094.01
2033	\$ 10,295.89
2034	\$ 10,501.81
2035	\$ 10,711.85
2036	\$ 10,926.08

* based on the completion of 495 kilowatts AC of capacity at the Completion Date or \$3,050 per installed kilowatt AC.

Exhibit C

PROJECT INVENTORY

A. Real and Personal Property Subject to Taxation.

Equipment Type	Quantity	Manufacturer	Model	Fair Market Value
Solar Modules	2,550	Trina	255 Watt	\$325,125.00
Inverter & Accessories	1	Solectria	SGI-500XTM-380	\$53,827.50
Piles & Racking	1	Terra Smart	TerraFarm	\$187,816.5
AC Equipment & BOS	1	Various	Various	\$60,000

B. Real and Personal Property Exempted from Taxation.

C. Estimates.

Estimated Capacity: 0.495 MW (AC)
0.650 MW (DC)

Estimated Annual Production of Electricity (in kilowatt hours): 835,227