

**TOWN OF GILL  
AGREEMENT  
FOR  
PAYMENT IN LIEU OF PERSONAL PROPERTY TAXES  
SUMMARY OF TERMS**

**DATE OF EXECUTION:** NOVEMBER \_\_\_\_\_, 2023

**TOWN MEETING WARRANT ARTICLE:**

**ANTICIPATED EFFECTIVE FISCAL YEAR:** FY2024

**TERM:** 20 YEARS

**DEVELOPER:** KEARSARGE GILL, LLC  
1200 SOLDIERS FIELD ROAD STE 202,  
BOSTON, MA, 02134  
(617) 393-4222

**EXPECTED NAMEPLATE CAPACITY:** 2.7 MWDC

**PROPERTY ADDRESS:** 586 MAIN ROAD  
GILL, MASSACHUSETTS

**ASSESSORS' PARCEL ID:** MAP 202, LOT 4.1

**AMOUNT OF INITIAL PILOT PAYMENT:** \$16,489.81

**ANNUAL ESCALATOR** 2.50%

The foregoing information is merely intended to be a Summary of the Terms of the PILOT Agreement that follows. In the event of any of the foregoing terms are different than those in the PILOT Agreement that follows, the terms as set forth in the PILOT Agreement shall control.

**AGREEMENT**  
**FOR**  
**PAYMENT IN LIEU OF PERSONAL PROPERTY TAXES**

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR PERSONAL PROPERTY pursuant to Chapter 59, Section 5, Clause 45<sup>th</sup>, as amended by Chapter 8 of the Acts of 2021, (hereinafter "the Agreement") is made and entered into as of \_\_\_\_\_ 2023 by and between Kearsarge Gill, LLC, a Massachusetts Limited liability Company, 1200 Soldiers Field Road, Suite 202, Boston, MA, 02134, (hereinafter the "Developer"), and the Town of Gill, a municipal corporation duly established and existing under the laws of the Commonwealth of Massachusetts with an address of 325 Main Road Gill, Massachusetts 01354 (hereinafter 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 , owns and operates a solar photovoltaic facility, with a nameplate capacity of approximately 2.7 megawatts ("MW") direct current ("DC"), (such facility, together with its solar photovoltaic electricity generating panels, panel mounting equipment, inverters, energy storage batteries, and all other appurtenant materials and equipment identified in Exhibit C attached hereto, is referred to as the "Project"), located on 11.37 acres of land at 586 Main Road, Gill, Massachusetts, owned Northfield Mount Hermon School, a Massachusetts Corporation, having a mailing address, 1 Lamplighter Way, Mount Hermon, Massachusetts 01354, as more fully described in Exhibit A attached hereto (hereinafter the "Project Site"), also shown on Gill Assessors Map 202 as Lot 4.1, and which is subject to a lease between Main Road Solar 1, LLC, as tenant, and Northfield Mount Hermon School, a Massachusetts Corporation, having a mailing address, 1 Lamplighter Way, Mount Hermon, Massachusetts 01354, (hereinafter the "Landlord"), dated February 3, 2016, as amended by a Merger of Main Road Solar 1, LLC into Kearsarge Gill, LLC (see Certificate of Merger dated 11/23/2016 and recorded with the Franklin Registry of Deeds in Book 6971, Page 323 (the "Lease"));

**WHEREAS**, the Developer acknowledges that the power to be produced by the Project is greater than 125% of the annual electricity needs of the real property upon which the Project is located, and the annual electricity needs of the real property, both contiguous and non-contiguous of Northfield Mount Hermon School located in the Town of Gill, it is the intention of the Parties that Developer make annual payments to the Town for the Term (defined below) in lieu of all personal property taxes which would other be assessed against the Project in accordance with Massachusetts General Laws Chapter 59, Section 5, Clause 45<sup>th</sup>, as amended by Chapter 8 of the Acts of 2021; and

**WHEREAS**, the Town and 978 Solar Development, LLC entered into a Payment in Lieu of Tax Agreement pursuant to General Laws Chapter 59, Section 38(h) on July 7, 2016 (hereinafter “the 978 Solar PILOT”), and Solar Development, LLC assigned its rights under the 978 Solar PILOT to the Developer on December 12, 2016; and

**WHEREAS**, the Town and the Developer wish to terminate the 978 Solar PILOT, mutually release each other from any obligations or claims thereunder, and enter this Agreement; and

**WHEREAS**, because both Developer and the Town need an accurate projection of their respective expenses and revenues with respect to the personal property that is taxable under law, 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 personal property incorporated within the Project for the term of the Agreement; and

**WHEREAS**, except as provided herein, the Parties intend that, during the Term, Developer, and its’ successors and assigns, will not be assessed for personal property taxes assessed against the Project, and this Agreement will provide for the exclusive payments in lieu of such taxes during the Term; provided, however, that that the Parties do not 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, and similar payment obligations not in the nature of personal property taxes or substitutes for such taxes that Developer is otherwise obligated to pay the Town; and

**WHEREAS**, the Town is authorized to enter into this Agreement with Developer, provided the payments in lieu of personal property taxes over the life of the Agreement are expected at inception to approximate the personal property tax payments that would otherwise be determined under Chapter 59 of the General Laws of Massachusetts based upon the full and fair cash valuation of the Project; and

**WHEREAS**, the Parties have reached this Agreement after good faith negotiations.

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

**1. PAYMENT IN LIEU OF PERSONAL PROPERTY TAXES.**

Developer agrees to make payments to the Town in lieu of personal property taxes beginning July 1, 2023 for a period of twenty (20) consecutive years (hereinafter the “Term”), commencing with Fiscal Year 2024 (the first semi-annual payment date being November 1, 2023), and ending with Fiscal Year 2043 (the last semi-annual payment date being May 1, 2043),

in the amounts per year in Exhibit B. Each annual payment will be paid to the Town in two (2) equal semi-annual installments on or before November 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. Except to the extent that Paragraphs 2, 3 and 4 of the Agreement provide otherwise, Developer agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor, revaluation or reduction in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in Exhibit B, and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor, revaluation or increase in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in Exhibit B.

Pursuant to Chapter 59, Section 5, Clause 45<sup>th</sup>, as amended by Chapter 8 of the Acts of 2021, the term of this Agreement may be extended beyond twenty (20) years if the reason for said extension is clearly set forth herein. No such reason has been set forth herein and so the term has not been extended beyond twenty (20) years.

## **2. IMPROVEMENTS OR ADDITIONS; RETIREMENTS.**

“Nameplate Capacity” shall mean the nameplate capacity of the Project as certified by the engineer of record, expressed in watts DC or kilowatts DC. Within fourteen (14) days after the execution of this Agreement, Developer shall provide Town with an as-built description of the Project and a statement of its Nameplate Capacity, which shall be an amendment to the Exhibit C attached as of the date of this Agreement.

To the extent that Developer, at its sole option, makes any capital improvements to the Project or adds additional personal property on or after the date of this Agreement, the remaining payments in lieu of taxes will be increased as described in Paragraph 3. To the extent that Developer, at its sole option, retires or removes any capital improvements from the Project or retires or removes any personal property from the Project on or after the date of this Agreement for a period of six (6) consecutive months, the remaining payments in lieu of taxes will be decreased as described in Paragraph 3.

Notwithstanding the foregoing, consistent with applicable Massachusetts Department of Revenue regulations, only the addition of equipment on or after the date of this Agreement that adds value to the Project (not including replacement of existing equipment, machinery and pollution control and other equipment that is exempted from local property taxes) will lead to an increase in the payments in lieu of taxes due under this Agreement. No additional payments in lieu of property taxes will be due or required for:

- (a) replacement of personal property, or equipment, battery storage or machinery that is nonfunctional, obsolete or is replaced solely due to wear and tear or casualty or as part of scheduled or unscheduled maintenance; or

- (b) pollution control or other equipment that is exempted from taxation by the provisions of Chapter 59, Section 5 (44) of the General Laws of Massachusetts or other applicable laws or regulations in effect from time to time; or
- (c) equipment installed as required by or in response to any statute, law, regulation, consent decree, order or case mandating additional control of any emission or pollution

Notwithstanding the foregoing, no adjustment shall be made due to any decline in the energy generation efficiency or production of the Project unless said decline is solely due to the retirement or removal of any personal property from the Project after the date of this Agreement.

Developer and/or Tenant shall provide two weeks advance notice to the Town of any replacement or removal of personal property connected to the Project after the date of this Agreement.

### **3. CALCULATION OF ADJUSTMENT**

Except as otherwise provided in Paragraph 2, to the extent that on or after the date of this Agreement, Developer makes capital improvements to the Project or adds new personal property or equipment to the Project that would increase the generating capacity of the Project, or add storage capacity, and thereby increase the value of the Project under applicable Massachusetts Department of Revenue regulations, the remaining annual payments in lieu of taxes under this Agreement will be increased by the percentage increase in generating capacity beginning with the first semi-annual payment due in the Fiscal Year immediately following the Fiscal Year in which said new personal property or equipment was added to the Project. To the extent that on or after the date of this Agreement, Developer retires or removes property from the Project, for a period greater than six (6) months, so as to decrease the generating capacity of the Project, the remaining annual payments in lieu of taxes under this Agreement will be decreased by the percentage decrease in generating capacity beginning with the first semi-annual payment due in the Fiscal Year immediately following the Fiscal Year in which said new personal property or equipment was removed from the Project.

### **4. INVENTORY, INSPECTIONS & ANNUAL AFFIDAVIT**

During the Term, within six (6) months after the execution of this Agreement, the Parties will agree on a mutually acceptable inventory of personal property incorporated into the Project as of the date of this Agreement (hereinafter the "Inventory"). The Inventory will itemize all personal property subject to taxation and adjustment pursuant to Paragraph 3 and all personal property exempted from taxation and adjustment pursuant to Paragraph 3, and will identify the aggregate value of each category of the personal property (such categories to be mutually agreed to by the Parties.). The general categories for the Inventory are listed in Exhibit C. The Parties

agree that the categories include all costs for taxable items that will be incurred by Developer in completing the Project. The Town, its officers, employees, consultants and attorneys will have the right to inspect the Project, at reasonable times and upon reasonable notice and subject to compliance with all Developer's safety requirements, in connection with the preparation of the Inventory.

During the term of this Agreement, Developer will annually file an affidavit with the Board of Assessors no later than March 1<sup>st</sup>, in the form to be provided by the Town, setting forth:

- (i) the type of system
- (ii) the capacity of the Project
- (iii) the percentage of the annual needs of the real property on which the Project is located were met by the Project;
- (iv) the power generated by the Project in the previous calendar year;
- (v) an updated list of the Inventory.

The Developer shall attach a completed State Tax Form 2 (Form of List) to said Affidavit.

Town agrees that to the extent the foregoing Affidavit, or of any books, papers, records and other data requested by the Town to verify any State Tax Form 2 (Form of List) furnished by Developer pursuant to this Agreement which would, in the absence of this Agreement, be subject to the provisions of Massachusetts General Laws Chapter 59, Section 32, so much of those books, papers, records and data as shows the details of the personal estate which are not already a matter of public record or which are required to be produced by Developer under any other provision of this Agreement and would, under said provisions, not be subject to public disclosure, shall not be open to any other person except by order of a court as set forth in such law.

Promptly after both Parties execute this Agreement, Developer shall provide to the Town a copy of Developer's interconnection agreement with such utility. 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.

The Town, its officers, employees, consultants, agents and attorneys will have the right periodically, during normal business hours and upon reasonable advance notice to Developer, to inspect the Project and review documents in possession of Developer that relate to the Project's Nameplate Capacity solely for the purpose of verifying the Nameplate Capacity.

## **5. PAYMENT COLLECTION**

In addition to such rights and remedies available in this Agreement, all statutory rights

and remedies available to the Town for the collection of taxes shall also be available to the Town for the collection of PILOT Payments hereunder, including, but not limited to, the rights and remedies provided in General Laws Chapter 59 and General Laws Chapter 60, and all such rights and remedies are hereby reserved notwithstanding anything to the contrary herein.

In order to secure payment of the PILOT Payments required hereunder, upon execution of this Agreement, the Developer hereby grants the Town of Gill a security interest in the Project, the valuation and assessment of which has given rise to the Personal Property Tax that remains unpaid for as more fully described in Exhibit “C” attached hereto and incorporated herein and further acknowledges that the Town shall file a UCC Financing Statement with the Secretary of the Commonwealth of Massachusetts and the Town Clerk of the Town of Gill evidencing such security interest.

All late payments shall accrue interest at the rate prescribed by law for the late payment of taxes. 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.

By initialing this paragraph, the Developer acknowledges that it has read and understands the foregoing provisions of Section 5, and further the Developer expressly acknowledges that it is granting a security interest to the Town in the Project Site to secure timely payment of the payments required hereunder.

\_\_\_\_\_  
initials

**6. TAX STATUS**

The Town agrees that during the term of this Agreement the Town will not assess Developer for any personal property taxes on the Project. The Town further agrees that this Agreement will exclusively govern the payments made in lieu of the personal property taxes which would otherwise have been assessed on the Project, provided, however, that this Agreement will not affect any other taxes owed by the Developer or the Property owner, including, but not limited to, taxes for personal property not incorporated into the Project, or real estate taxes, which taxes, if any, shall be assessed in accordance with applicable laws and regulations.

The Developer expressly understands that the Town will continue to assess the Project Site at its full and fair cash value, and that the Developer or other record owner of the Project Site, from time to time, shall be required to pay real estate taxes due as a result of this assessment as required by the applicable provisions of the General Laws of Massachusetts.

By initialing this paragraph, the Developer acknowledges that it has read and understands the foregoing provisions of Section 6, and further the Developer expressly acknowledges that real estate taxes shall be assessed upon the Project Site and are not included in this Agreement.

\_\_\_\_\_  
initials

Notwithstanding the foregoing or anything to the contrary in this Agreement, upon the expiration or earlier termination of this Agreement, the Town shall not be bound by any valuation/payment amount, schedule or formula set forth in this Agreement in the assessment of future taxes for the Project after the date of such expiration or termination.

#### **7. ASSIGNMENT**

The Developer shall not assign this Agreement in whole or in part without the advance written consent of the Authorized Signatories of the Town as set forth in Article 4 of the June 12, 2023 Annual Town Meeting, as amended, which shall not be unreasonably withheld, conditioned, or delayed, except that Developer may:

- (i) collaterally assign the Agreement to an entity providing financing for construction, operation or maintenance of the Project with advance written notice to the Town, provided that Developer shall not be relieved of its obligations hereunder; or
- (ii) with advance written notice to the Town and provided all PILOT Payments due the Town have been paid by Developer, assign the Agreement to an entity no less creditworthy than Developer to whom Developer has sold or transferred all its interests in the Project, provided that, upon an assignment under this clause (ii), Developer shall be deemed as having represented and warranted to the Town that the assignee has the financial ability to comply with all obligations of Developer hereunder.

Upon assignment, this Agreement will be binding upon the successors and assigns of Developer as owner of the Project, and the obligations created hereunder will run with the Project Site and the Project.



## **8. STATEMENT OF GOOD FAITH & WAIVER OF RIGHT TO SEEK ABATEMENT**

The Parties expressly 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, to the extent that such value is determinable as of the date of this Agreement in accordance with Chapter 59, Section 5, Clause 45<sup>th</sup>, as amended by Chapter 8 of the Acts of 2021. 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 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 that are appropriate and serve their respective interests. The Town acknowledges that this Agreement is beneficial to it because it will result in mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes to the Town. The Developer acknowledges that this Agreement is beneficial to it because it ensures that there will be mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes for the Project.

The Developer further acknowledges that prior to executing this Agreement it was informed by the Town that in executing this Agreement, the Developer would be required to waive any right to seek an abatement or reduction of the payments in lieu of the personal property tax that would otherwise be required on the Project, except as expressly provided for herein. Having been so informed, the Developer hereby waives any right to seek an abatement or reduction of the payments in lieu of the personal property tax that would otherwise be required on the Project, except as expressly provided for herein.

If the Developer files, or causes to be filed, an Application for Abatement relative to said payment in lieu of taxes on the Project, the Developer shall be assessed an Omitted Tax pursuant to Massachusetts General Laws Chapter 59, Section 75 equal to One Hundred and Fifty (150%) Percent of the full annual PILOT payment that would have been required for the Fiscal Year in which said Application for Abatement is filed.

If the Developer files a Petition under the Formal or Informal Procedure with the Massachusetts Appellate Tax Board appealing the denial of Application for Abatement of Personal Property Taxes during the term of this Agreement, the Town shall file a Motion to Dismiss said petition with the Appellate Tax Board, and the Developer hereby assents to said Motion to Dismiss.

By initialing this paragraph, the Developer expressly acknowledges that it has read, understands, and agrees to the foregoing provisions of this Section 8, and further the Developer expressly acknowledges that it is waiving any right to seek an abatement or reduction of the payments in lieu of the personal property tax that would otherwise be required on the Project, except as expressly provided for herein.

\_\_\_\_\_  
initials

#### **9. INVALIDITY**

If, for any reason, it is ever determined by the Massachusetts Appellate Tax Board or by any other court of competent jurisdiction that any material provision of this Agreement is unlawful, invalid or unenforceable then the parties shall undertake best efforts to amend and or reauthorize this Agreement so as to render all material provisions lawful, valid and enforceable. If despite said best efforts, it is not possible to amend and reauthorize this Agreement, then this Agreement shall be declared void effective the immediately following January 1 in accordance with this Paragraph 9, any payments due and/or made to the Town before the date of such declaration shall be and remain property of the Town, and, to the extent permitted by law, shall be deemed full satisfaction of the taxes in lieu of which they were made.

**10. LENDER’S RIGHT TO CURE**

The Town shall send a copy of any notice of default sent to Developer, to any secured lender providing financing to Developer in connection with the Project (as identified in Section 11 hereof, the “Lender”) by certified mail at the same time such is notice is sent to Developer, and where this Agreement expressly provides for a cure of said default, no such notice of default to Developer shall be effective unless and until a copy of such notice has been delivered to Lender, and the applicable cure period, beginning on the date of such delivery, has expired. Lender shall have the same time and rights to cure any default as Developer, and the Town shall accept a cure by Lender as if such cure had been made by Developer, provided said cure is made in accordance with the provisions of this Agreement.

**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, or by mail in a manner of delivery that results in a confirmation of receipt, such as certified mail or Federal Express. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

To: Developer

Kearsarge Gill, LLC  
1200 Soldiers Field Road, Suite 202  
Boston, MA, 02134  
Tel#:  
e-mail:

To: Town

Gill Board of Selectmen  
325 Main Road  
Gill, Massachusetts 01354

With a copy to:

Gill Board of Assessors  
325 Main Road  
Gill, Massachusetts 01354

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 is made, and shall be interpreted, in accordance with the laws of the Commonwealth of Massachusetts without regard to the law of “conflicts of laws.” The Parties 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. Venue for all court actions brought hereunder shall be (solely) the state courts located in the county in which the Town is located. Developer agrees to accept service of process, including civil complaints, by certified mail at the address indicated in Paragraph 11 hereof.

**13. FORCE MAJEURE.**

As used herein, an event of Force Majeure is an event beyond the reasonable control of the Parties, and includes, without limitation, the following events:

- (a) Acts of God, including floods, winds, storms, earthquake, fire, or other natural calamity, including pandemic;
- (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 Project Site or the Project.

In the event that a Force Majeure occurs during the term of this Agreement that renders the Project wholly or substantially unable to produce electricity for a period of more than sixty (60) days, Developer may, at its election, terminate the Agreement following expiration of such 60-day period by written notice to the Town, provided that such termination shall be effective no earlier than the end (June 30) of the Fiscal Year in which said notice is received by the Town, and provided further that the Project will thereafter be assessed and taxed as if this Agreement does not exist.

Notwithstanding the foregoing or any Force Majeure event, Developer shall continue to make PILOT Payments without abatement or reduction until this Agreement is terminated, if at all, in accordance with this Paragraph 13.

**14. CERTIFICATION OF TAX COMPLIANCE.**

Pursuant to, and to the extent required by, G.L. c. 62C, § 49A, Developer, by its signature hereof, certifies that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

The Developer and Landlord hereby certify that respectively, they are current and in compliance with all real estate taxes, personal property taxes and other municipal charges due the Town of Gill and shall remain current and in compliance with such real estate taxes, personal property taxes and other municipal charges for the Term. The failure to comply with this section, after written notice of said failure and an opportunity to cure within thirty (30) days after said written notice, shall be cause for the Town of Gill to assess a Non-Compliance Assessment equal to the difference between the amount of the PILOT payments received as of the date of said notice from the Town of Gill and the amount of total personal property tax that otherwise would have been assessed by the Town of Gill for the Project from January 1, 2022 to the date of said written

By signing this paragraph, the Developer and the Landlord respectively, expressly acknowledge that they have read, understand, and agree to the foregoing provisions of Section 14, and further the Developer and the Landlord respectively, expressly acknowledge and state that they are current in all real estate taxes, personal property taxes, sewer and water charges, and other municipal charges owed to the Town of Gill.

---

notice had the personal property of Project been assessed by the Town of Gill as provided in Chapter 59 of the General Laws of Massachusetts. Said amount shall be deemed to be part of the Payment in Lieu of Taxes and shall be subject to collection as provided herein.

**15. COVENANTS, REPRESENTATIONS AND WARRANTIES OF DEVELOPER AND TOWN.**

- (1) During the term of the Agreement, Developer will not do any of the following:
  - a. convey by sale, lease, assignment or otherwise any interest in the Property or Project to any tax-exempt entity or organization, including without limitation to a charitable organization pursuant to G.L. c.59, § 5 (Clause Third);
  - b. fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement;
  - c. fail to pay the Town all amounts assessed and payable pursuant to duly issued real estate tax bills for the Project Site in a timely fashion and as required by General Laws Chapter 60;
  - d. seek, for any reason, an abatement or reduction of any of the amounts assessed in accordance with the terms of this Agreement, other than according to its rights under this Agreement, and Developer hereby waives, during the full

term of this Agreement, any rights it may have otherwise had to seek such an abatement or reduction, other than its rights under this Agreement;

- e. seek to amend or terminate this Agreement on account of the enactment of any law or regulation or a change in any existing law or regulation the intent or effect of which is to fix or limit in any way the method for calculating payments-in-lieu-of-taxes for renewable energy facilities.

(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 other business entity, is registered with the Secretary of the Commonwealth of Massachusetts, 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 other 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 does not qualify for a manufacturing classification exemption pursuant to Massachusetts General Laws Chapter 59, Section 5(16)(3);
- f. The documents and information furnished by Developer to the Town in connection with this Agreement, including but not limited to the Project's Nameplate Capacity and any update thereto, are true, accurate and complete in all material respects;
- g. The performance of Developer's obligations under this Agreement will not violate or result in a breach or default of any agreement or instrument to which Developer is a party or to which Developer is otherwise bound.

(3) Town represents and warrants to Developer that it has secured all approvals of its

Board of Selectmen, Board of Assessors, and Town Meeting required for execution of this Agreement.

**16. TERMINATION BY THE TOWN**

Notwithstanding anything to the contrary in this Agreement, the Town may terminate this Agreement on thirty (30) days written notice to Developer if:

1. the 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 two times in any rolling 365-day period, even if each such failure is cured within the 30-day notice period;
2. the Developer has filed, or has had filed against it and is not dismissed within sixty days, a petition in Bankruptcy, or is otherwise insolvent;
3. the 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 two times in any rolling 365-day period, even if each such breach is cured within the 30-day notice period; and/or
4. The Developer's representations set forth in Paragraph 15 were untrue, inaccurate, or incomplete in material respects at the time they were made.

The forbearance of the Town in not terminating this Agreement as a result of the occurrence of any of the foregoing conditions or events shall not be deemed a waiver the Town's right to terminate this Agreement as provided herein.

**17. PAYMENT OF TOWN COSTS.**

The Parties hereto acknowledge that the Developer and the Town have executed a legal fee agreement relative to the reimbursement for the Town's reasonable legal fees associated with the Project and this Agreement.

**18. 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 Project, and that there are no third-party beneficiaries to this Agreement.

**19. MISCELLANEOUS**

1. Subject to applicable laws and regulations and payment of costs by the requesting Party as set forth below, each Party will, periodically hereafter, negotiate in good faith to execute and deliver, or cause to be executed and delivered, such reasonable additional documents as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement, including customary lender consent documents as requested by Developer. The costs of executing and delivering documents or instruments requested by Developer, including attorneys' fees, shall be paid, in advance based on the Town's reasonable estimate, by Developer, to be promptly adjusted after actual costs are known; provided that neither Party shall be required to provide an opinion of such Party's legal counsel. Notwithstanding the foregoing, Town shall not be required to sign any document that will increase its risks or obligations under this Agreement or result in the waiver of any of its rights, remedies or defenses under this Agreement or at law or in equity, as solely determined by Town.
  
2. This Agreement may be executed in several counterparts, each of which shall be an original, and all of which shall constitute but one and the same instrument.

**SIGNATURES FOLLOW ON NEXT PAGE**



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.

Town of Gill  
Town Administrator

Town of Gill  
By its Board of Selectmen

\_\_\_\_\_  
Ray Purington

\_\_\_\_\_  
Chairman

\_\_\_\_\_

\_\_\_\_\_

Approved as to Legality & Form

\_\_\_\_\_  
Matthew J. Thomas, Esq.  
Special Counsel

Gill Board of Assessors

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Kearsarge Gill, LLC  
By its Manager

\_\_\_\_\_  
Kearsarge Solar, LLC  
Authorized Signatory

Dated:



## EXHIBIT A

### The Project Site

The Project Site means the real property located at 586 Main Road, Gill, Massachusetts, and consists of a Gill Assessors' Map 202, Lot 4.1, containing approximately 11.37 acres of land as more specifically described in the Notice of Lease recorded with the Franklin County Registry of Deeds in Book 6971, Page 311 and as shown on Exhibit "A" – Lease Area Plan attached to said Notice of Lease (a copy of which is attached hereto). For the Landlord's title, see Franklin County Registry of Deeds Book 597, Page 31.

### Legal Description of Leased Premises

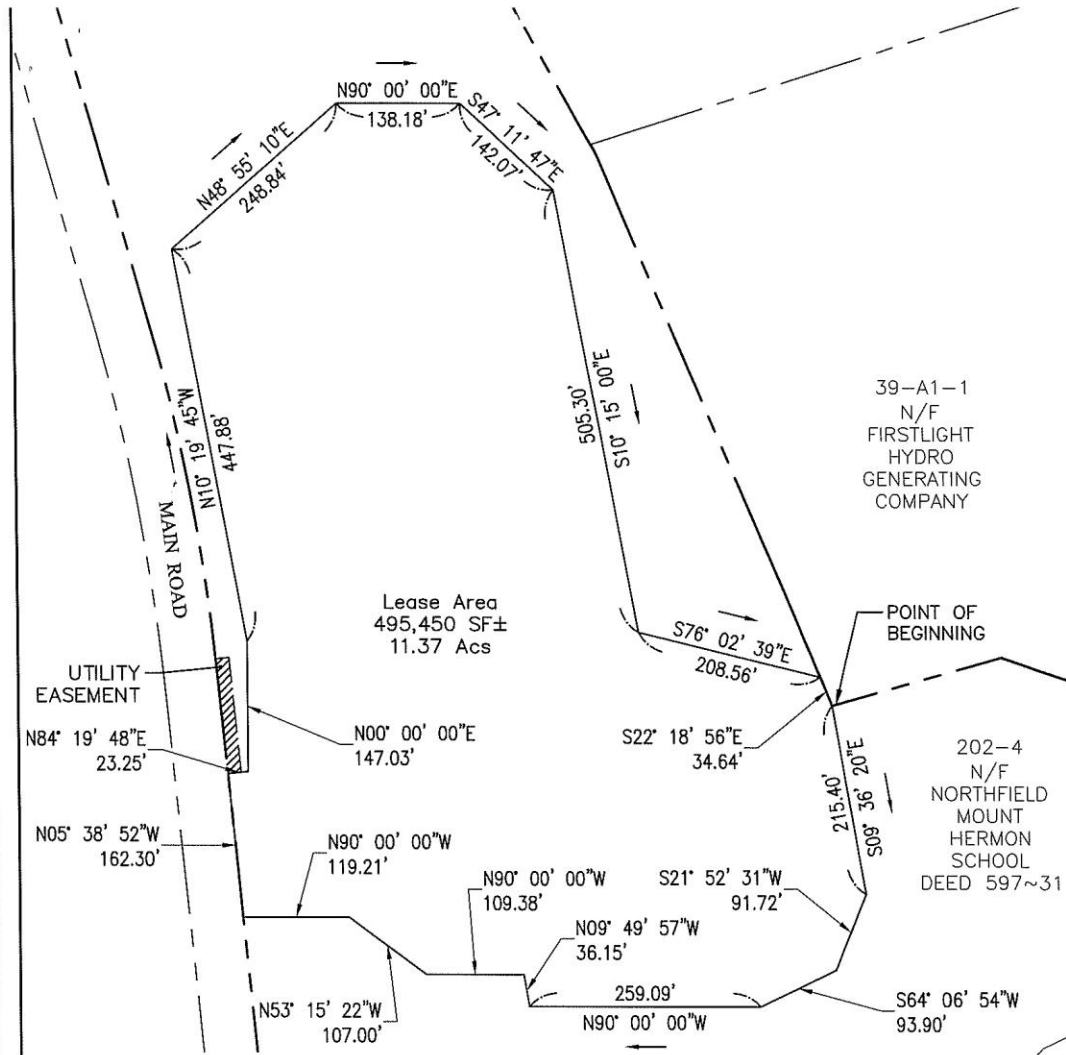
Located on the Easterly sideline of Main Road, in the Town of Gill, County of Franklin, the Commonwealth of Massachusetts, and being a portion of land now or formerly of Northfield Mount Hermon School (Deed Book 597, Page 31), bounded and described as follows:

Beginning at a point marked by a stone bound at the town corner of Northfield and Gill, said point being on the on the easterly sideline of said parcel of land referenced above also being the Southwesterly corner of and N/F of Firstlight Hydro Generating Company; thence running

S 09° 36' 20" E	a distance of 215.40 feet to a point;
S 21° 52' 31" W	a distance of 91.72. feet to a point;
S 64° 06' 54" W	a distance of 93.90 feet to a point;
N 90° 00' 00" W	a distance of 259.09 feet to a point;
N 09° 49' 57" W	a distance of 36.15 feet to a point;
N 90° 00' 00" W	a distance of 109.38 feet to a point;
N 53° 15' 22" W	a distance of 107.00 feet to a point;
N 90° 00' 00" W	a distance of 119.21 feet to a point along the easterly sideline of Main Road; thence along said sideline;

N 05° 38' 52" W	a distance of 163.50 feet to a point; thence leaving said sideline of Main Road;
N 84° 19' 48" E	a distance of 23.25 feet to a point;
N 00° 00' 00" E	a distance of 147.03 feet to a point;
N 10° 19' 45" W	a distance of 447.88 feet to a point;
N 48° 55' 10" E	a distance of 248.84 feet to a point;
N 90° 00' 00" E	a distance of 138.18 feet to a point;
S 47° 11' 47" E	a distance of 142.07 feet to a point;
S 10° 15' 00" E	a distance of 505.30 feet to a point;
S 76° 02' 39" E	a distance of 208.56 feet to a point;
S 22° 18' 56" E	a distance of 34.61 feet to the point of beginning.

The above-described Lease Area contains 495,450 s.f. +/- (11.37 acres) and is more particularly shown and described as Lease Area on a plan entitled "Exhibit A – Lease Plan, 586 Main Road, Gill, MA 01354, Date: May 25, 2016, Scale 1"=150', Prepared by Borrego Solar Systems, Inc."



**EXHIBIT A- LEASE AREA PLAN**

	<p><b>586 MAIN ROAD</b> <b>GILL, MA 01354</b></p>					
<p>SCALES STATED ON DRAWINGS ARE VALID ONLY WHEN PLOTTED 8 1/2" X 11"</p>						
REV	DATE	DRAWN	CHECKED	DESCRIPTION	<p><b>BORREGO SOLAR</b> 55 TECHNOLOGY DRIVE, SUITE 102 LOWELL, MA 01851 (888) 898-6273</p>	<p><b>LP-1</b> Lease Area Plan</p>
	11/28/16	BLS	DS	TO CLIENT		

**EXHIBIT B**

**PILOT RATE, NAMEPLATE CAPACITY AND ESTIMATED PILOT PAYMENTS  
(Subject to Adjustment for as-built Nameplate Capacity and resulting PILOT Payment)**

**Initial PILOT Rate = \$5,953.00/MWDC  
Escalator = 2.50%**

Year	Assumed Nameplate Capacity	Annual PILOT Payment (\$)
FY2024	2.770 MWDC	\$ 16,489.81
FY2025	2.770 MWDC	\$ 16,902.06
FY2026	2.770 MWDC	\$ 17,324.61
FY2027	2.770 MWDC	\$ 17,757.72
FY2028	2.770 MWDC	\$ 18,201.66
FY2029	2.770 MWDC	\$ 18,656.71
FY2030	2.770 MWDC	\$ 19,123.12
FY2031	2.770 MWDC	\$ 19,601.20
FY2032	2.770 MWDC	\$ 20,091.23
FY2033	2.770 MWDC	\$ 20,593.51
FY2034	2.770 MWDC	\$ 21,108.35
FY2035	2.770 MWDC	\$ 21,636.06
FY2036	2.770 MWDC	\$ 22,176.96
FY2037	2.770 MWDC	\$ 22,731.39
FY2038	2.770 MWDC	\$ 23,299.67
FY2039	2.770 MWDC	\$ 23,882.16
FY2040	2.770 MWDC	\$ 24,479.22
FY2041	2.770 MWDC	\$ 25,091.20
FY2042	2.770 MWDC	\$ 25,718.48
FY2043	2.770 MWDC	\$ 26,361.44



**EXHIBIT C**

**Materials and Equipment List**