

COVER SHEET

OPTION AND LEASE AGREEMENT

Effective Date		
Lease Commencement Date ¹		
Lessor	Town of Peterborough, NH	
Lessee	Water Street Solar 1, LLC	
Property address	1 Water Street Peterborough, NH	
Premises		
Option Payment	\$1	
Additional Option Payment	\$1	
Option Expiration		
Rent	\$1 per year subject to section 4	
Lease Term ²	20	
Expiration Date ³		
Extension Exercise Notice Deadline ⁴		
Addresses for Notices	<p>Lessee: Water Street Solar 1, LLC 360 22nd St, Suite 600, Oakland, CA 94612 Attn:</p> <p>With a copy to</p> <p>Borrego Solar Systems, Inc. 360 22nd St, Suite 600, Oakland, CA 94612 Attn: General Counsel</p>	<p>Lessor: Town of Peterborough 1 Grove Street Peterborough, NH 03458</p> <p>With a copy to John J. Ratigan, Esq. Donahue, Tucker & Ciandella, PLLC 225 Water Street Exeter, NH 03833</p>

¹ Parties agree to write in once Exercise Notice is delivered.

² Note: It is essential that the lease term is at least as long as the associated PPA.

³ Parties agree to write in once Exercise Notice is delivered.

⁴ Parties agree to write in once Extension Exercise Notice is delivered.

OPTION AND LEASE AGREEMENT

This Option and Lease Agreement (“*Lease*”) is dated as of the Effective Date and is entered into by and between Lessor and Lessee (each a “*Party*” and together, the “*Parties*”).

A. The real property owned by Lessor that is the subject of this Lease including access rights and Easements (“*Premises*”) and the property on which the Premises is located, if larger, (“*Property*”), is more particularly described in the attached Exhibit A.

B. Lessee desires to obtain the exclusive right to occupy the Premises and to enjoy all the rights necessary for Lessee to occupy, develop, design, engineer, access, construct, monitor, install, own, maintain and operate the System to be located upon, on and within the Premises as well as all the rights necessary or desirable for Lessee to sell the energy generated by such System and any and all other credits, solar renewable energy credits, and any other environmental financial attributes created as a result of such energy generation.

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

1. **Definitions.** Capitalized terms not otherwise defined in this Lease or on the Cover Sheet have the meanings assigned to them in Exhibit C.

2. **Option to Lease the Premises.**

(a) **Grant of Option.** In consideration of receipt of the Option Payment, (\$1.00), Lessor hereby grants to Lessee an option to Lease the Premises on the terms and conditions set forth in this Lease (the “*Option*”).

(b) **Option Payment.** The Option Payment shall be paid by Lessee to Lessor within five (5) Business Days after the Effective Date of this Lease.

(c) **Time and Manner of Exercise of the Option.** The Option shall be for an initial term of five hundred forty (540) days after the Effective Date (as it may be extended, the “*Option Term*”). The Option Term may be extended by Lessee for an additional five hundred forty (540) days upon notice to Lessor with payment of the Additional Option Payment at any time prior to the end of the initial Option Term.

(d) **Lessor Cooperation.** Lessor shall cooperate with (i) the performance of Tests, (ii) the obtaining by Lessee, at Lessee’s expense, of all licenses and Permits or authorizations required for Lessee’s use of the Premises from all applicable government and/or regulatory entities, but such cooperation shall not mean other than standard review of land use applications or permits by Lessor’s land use boards (collectively, “*Governmental Approvals*”) and (iii) the securing by Lessee at Lessee’s expense of all other leases, agreement, licenses and Permits or authorizations that relate to either Property or Premises. Lessor agrees to use reasonable efforts in assisting Lessee to acquire necessary utility service at the Premises. In the event that a utility company requires an easement in connection with Lessee’s use of the Premises, Lessor shall grant such necessary easement to the utility company, provided that such easement is in a commercially reasonable and recordable form.

3. **Exercise of Option; Leased Premises and Related Rights.**

(a) In order to exercise the Option, Lessee must deliver to Lessor a notice of exercise (the “*Exercise Notice*”), accompanied by the first Rent payment, prior to the expiration of the Option Term. The date of the Exercise Notice shall be the commencement of the Lease Term (the “*Lease Commencement Date*”). Subject to receipt of the Exercise Notice and first Rent payment, Lessor hereby leases the Premises to Lessee to

occupy, develop, design, engineer, construct, access, monitor, install, own, operate and maintain the System for the generation and distribution of electrical power. Lessor hereby also grants to Lessee and the applicable utility company, at all times on a 24-hours-a-day, 7-days-a-week basis, for any purposes reasonably connected with this Lease for a period co-terminus with the Lease, an easement which is irrevocable during the Lease Term for access, ingress, egress, utilities and related rights to the Premises and/or any surrounding or nearby property owned or leased by Lessor, passage through which is necessary or convenient to install, operate or gain access to the System or the Premises (the “*Easements*”). The Easements are generally depicted on Exhibit A attached hereto and incorporated herein. In the event that Lessee or the utility company desires to make such Easements a public record, Lessor shall execute and have notarized a commercially reasonable recordable document to memorialize the Easement, which Lessee may record in the office where real estate records are customarily filed in the jurisdiction of the Premises.

(b) Lessee shall have the right to install utilities, at Lessee’s expense, and to improve the present utilities on the Property (including, but not limited to, the installation of emergency power generators).

4. **Rents.** Lessee shall pay the Rent to Lessor for rental of the Premises (“*Rent*”) which shall be due annually beginning on the Lease Commencement Date and on every one (1) year anniversary thereof during the Lease Term. In the event this Lease is terminated by Lessee in accordance with this Lease prior to the Expiration Date, Lessor shall refund to Lessee the pre-paid but unearned annual Rent (pro-rated on a daily basis) within thirty (30) days after Lessee removes the System pursuant to the terms of Section 5. Lessor, its successors, assigns and/or designee, if any, shall submit to Lessee any documents required by Lessee in connection with the payment of Rent, including, without limitation, an IRS Form W-9. Rent shall be \$1.00 per year as long as the Town is receiving power under the PPA, and \$3,000 per month with a 1% per annum cost escalator applicable if a party other than the Town is receiving the power.

5. **Term and Termination; Removal.**

(a) The Lease Term shall commence on the Lease Commencement Date and terminate on the Expiration Date, as it may be extended. Notwithstanding anything to the contrary herein, the Expiration Date shall not occur prior to the expiration of any power purchase, energy sales, utility credit purchase or similar agreement entered into by Lessee to sell the products generated by the System or any extension thereof.

(b) Notwithstanding anything to the contrary herein, Lessee may terminate this Lease immediately upon notice to Lessor without penalty or further liability: (i) within one hundred twenty (120) days following the Lease Commencement Date if Lessee determines that the System cannot be installed and operated according to the investment criteria of Lessee’s debt or equity financing sources and the provisions of the applicable power purchase agreement and interconnection agreement, (ii) if Lessee receives unacceptable Test results, or (iii) if Lessee does not obtain, maintain or otherwise forfeits or cancels any necessary license, permit or Governmental Approval.

(c) If this Lease expires or is terminated by Lessee in accordance with Section 5(b), Lessee shall complete the removal of the System and repair of any damage caused to the Premises by the installation or removal of the System on or before the Removal and Restoration Date. The removal and restoration shall be at Lessee’s sole expense. In connection with such removal and restoration, Lessor shall continue to provide Lessee and its Affiliates and subcontractors with access to the Premises until the Removal and Restoration Date.

(d) **Removal of System at Expiration/Termination.** In the event Lessee fails to complete the removal of the System and restoration of the Premises by the Removal and Restoration Date, Lessor may provide notice to Lessee stating that Lessee has failed to remove the System (the “*Abandonment Notice*”). If Lessee fails to remove the System within sixty (60) days after receipt of the Abandonment Notice, Lessor shall have the right, at its option, in its sole discretion, to cause the removal the System by a qualified licensed contractor and complete restoration of the Premises, at Lessee’s cost and expense. The Removal Performance

Guarantee in an amount and form acceptable to the Town (Letter of Credit or cash) shall be posted with the Town 12 months prior to the expiration of the Lease or any extension thereof.

6. **Extension Option.** Providing that Lessee continues to operate the System, Lessee shall have the option to extend the Lease Term for two (2) additional and successive periods of five (5) years (each an “*Extension Option*”) beginning on the day following the expiration of the then-current Term (each an “*Extension Term*”), by giving notice (the “*Extension Exercise Notice*”) to Lessor not less than ninety (90) days prior to the Expiration Date, and without the requirement of any further action on the part of either Lessor or Lessee.

7. **System Construction; Lessor Acknowledgment.** Prior to commencement of construction of the System by Lessee, Lessee shall obtain the necessary Permits. Throughout the Lease Term, Lessee shall have the right to clean, repair, replace and dispose of part or all of the System as Lessee in its discretion determines to be necessary. Lessor acknowledges and understands that the System shall consist of a solar photovoltaic electric generating system, designed to produce electricity and deliver such electricity to the electric interconnection point, including without limitation all of the following: installation equipment; generation facilities, including inverters, fuses, transformers, wiring and output breakers; facilities necessary to connect to the electric interconnection point; protective and associated equipment; and other improvement reasonably necessary for the construction, operation, monitoring and maintenance of the system. Except as may otherwise be specifically agreed upon by the Parties or as expressly set forth herein, Lessee shall be responsible for all costs of design, permitting, construction, installation, operation, maintenance and removal of the System.

8. **Access to Premises.**

(a) Commencing on the Effective Date and throughout the Option Term and Lease Term, Lessee shall have the exclusive right to enter upon the Property to perform all effort and labor necessary to carry out tests, inspections, surveys and investigations (“*Tests*”), and design, engineer, construct, install, inspect, test, operate, upgrade, repair and maintain the System on the Premises. Lessor shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the furnishing, installation, testing, commissioning, deconstruction, disassembly, decommissioning and removal of the System and access for rigging and material handling, and including a temporary, reasonable area for construction laydown, as further described on Exhibit B or as reasonably designated by Lessor from time to time. Lessor and its authorized representatives shall at all times have access to and the right to observe the installation of the System, subject to compliance with Lessee’s safety rules and Applicable Laws, and subject at all times to the sole and absolute discretion of Lessee’s construction manager; provided, however, that Lessor shall not interfere with the installation of the System or enter onto, move, adjust, alter, tamper with or otherwise handle any Lessee equipment or any component of the System.

(b) Lessee and Lessee Parties shall at all times conduct themselves in a professional manner at the Premises and shall observe the reasonable requests of Lessor. Lessee shall use reasonable care in entering and exiting the Premises, and in its storage of equipment and materials at the Premises or Property.

(c) If Lessee does not exercise the Option within the Option Term, Lessee shall, at Lessee’s sole cost and expense, promptly remove any and all liens, improvements, personal property, equipment, goods, and other property, and all trash, debris, and other refuse from the Premises that is the result of Tests, and shall have no other rights in and to the Premises or Property.

9. **Statutory and Regulatory Compliance.** Lessee, Lessee Parties, Lessor and the Lessor Parties shall each comply with all applicable provisions of all Applicable Laws of the locality in which the Property is located.

10. Lessee's Ownership of System and Output. The System is personal property, whether or not the same is deemed real or personal property under Applicable Law, and shall not attach to or be deemed a part of, or a fixture to, the Premises or Property. Lessee shall be the legal and beneficial owner of the System at all times and Lessor shall have no right, title or interest in the System or any component thereof, notwithstanding that any such System may be physically mounted or adhered to the Premises or Property. Lessor covenants that it will use commercially reasonable efforts to place all parties having an interest in or lien upon the Property on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Property or Premises which could reasonably be construed as attaching to the System as a fixture of the Property or Premises, Lessor shall provide a disclaimer or release from such lien holder. Lessor, as the fee owner of the Property, consents to the filing by Lessee, on behalf of Lessor, of a disclaimer of the System as a fixture of the Property or Premises in the office where real estate records are customarily filed in the jurisdiction of the Property. Further, Lessor acknowledges and agrees that Lessee is the exclusive owner of all electricity and all utility credits generated by the System and owner of all Environmental Attributes and Incentives attributable to the System. Executed simultaneously by the Parties is a Power Purchase Agreement ("PPA") which governs the sale of electricity between the Parties. Lessor shall endeavor not to make or publish any public statement or notice regarding the ownership of any Environmental Attribute or Incentive relating to the System or the electricity generated by the System. Violation of this publication covenant shall not constitute a default or a breach of a material term of this Lease provided that Lessor, within 30 days of notice from Lessee, published a corrective statement to the extent reassembly is required by Lessee (and which may be anticipated to be in the form of a press release or a posting on the Lessor's website). The Parties acknowledge and agree that the System shall not be considered an electric public utility, an investor owned utility, a municipal utility, or a merchant power plant otherwise known as an exempt wholesale generator.

11. Representation and Warranties of the Parties as to Authorization and Enforceability

Each Party represents and warrants that the execution and delivery by such Party of, and the performance of its obligations under, this Lease have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other Person, and do not contravene any provision of, or constitute a default under any indenture, mortgage or other material agreement binding on such Party or any valid order of any court, or regulatory agency or other body having authority to which such Party is subject. 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 a Bankruptcy Event, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity where such enforceability is considered in a proceeding in equity or at law.

12. Representations, Warranties and Covenants of the Lessor

(a) Lessor's Title to Premises. Lessor represents, warrants and covenants that Lessor has a lawful fee simple interest in title to the Property, including the Premises, and that Lessee shall have quiet and peaceful possession of the Premises free from any claim of any entity or Person of superior title thereto without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the Lease Term. Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Property during the Lease Term unless Lessor shall have given Lessee at least thirty (30) days' prior notice thereof, which notice shall identify the transferee, the area of the Property to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the Easements granted in this Lease shall run with the Property and survive any transfer of all or any portion of the Property. In furtherance of the foregoing, Lessor shall cause any purchaser, lessee, assignee, mortgagee, pledge, secured party or party to whom a lien on the Premises or Property has been granted to execute and deliver to Lessee a commercially reasonable document pursuant to which such party acknowledges and consents to the 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, or any work related to such System, and shall not gain any interest in the System by virtue of the Lessor's transfer.

(b) No Interference With and Protection of System. Lessor will not conduct activities on, in or about the Property or Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System or operation thereof. Lessor shall take all reasonable actions to limit access to the Premises to Lessee and Lessee Parties. During the Lease Term, the System shall be operated, maintained and repaired by Lessee at its sole cost and expense; provided, that any repair or maintenance costs incurred by Lessee as a result of Lessor's negligence, misconduct or breach of its obligations hereunder shall be promptly reimbursed to Lessee by Lessor.

(c) Insolation. Lessor acknowledges and agrees that access to sunlight ("*insolation*") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Premises, Lessor shall promptly advise Lessee of such information. Lessor further represents and warrants that, to the best of its knowledge, there are no developments pending or in progress on adjacent or nearby properties that could diminish the insolation to the Premises.

(d) Hazardous Substances. Lessor represents and warrants that there are Hazardous Substances present on, in or under the Property or Premises as reflected in the Lagoon Decommissioning Report, dated January, 2014, a copy of which has been supplied to the Lessee.

(e) Condition of Premises. Except as otherwise expressly set forth herein Lessee accepts the Premises "as is" without benefit of any improvements or modifications to be made by Lessor.

(f) Notice of Damage or Emergency. Lessor shall immediately notify Lessee if Lessor becomes aware, through discovery or receipt of notice: (i) of any damage to or loss of the use of the System; (ii) of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises; or (iii) of any interruption or material alteration of the energy supply to or from the Premises or the System.

(g) Representations Regarding Security Interest in System. Lessor has been advised 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 (the "*Security Interest*") in the System to one or more Financing Parties and Lessor hereby consents to such Security Interest. In connection therewith, Lessor represents and warrants as follows: (i) the granting of the Security Interest will not violate any term or condition of any covenant or restriction affecting the Property or Premises; (ii) there is no existing lease, mortgage, security interest or other interest in or lien upon the Property or Premises that could attach to the System as an interest adverse to or senior to Lessee's Financing Parties' Security Interest therein; and (iii) there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under the Lease.

(h) Utilities. At Lessee's request, Lessor shall provide electric current and water to the perimeter of the Premises; provided, however, separate meters for such utilities shall be installed at Lessee's expense and Lessee shall be responsible for all utility expenses.

13. Representations, Warranties and Covenants of Lessee.

(i) Regulatory Status. 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 the laws of the [State of New Hampshire].

(j) Liens. Except for the Financing Party's Security Interest in 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 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 discharge or bond, at its sole expense, any such encumbrance or interest that attaches to the Premises, to the extent that such encumbrance or interest arises from or is related to Lessee's performance or non-performance of its obligations hereunder.

14. **Hazardous Substances.** Neither Party shall introduce or use any Hazardous Substances on, in or under the Premises or Property in violation of any Applicable Law. If a Party becomes aware of any such Hazardous Substances, it shall promptly notify the other Party of the type and location of such Hazardous Substances in writing. Each Party agrees to indemnify, defend and hold harmless the other Party from and against any and all Environmental Claims including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that such Parties may suffer or incur due to any actions, that relate to or arise from such Party's activities on the Premises, except to the extent directly attributable to the negligent acts or omissions or willful misconduct of the other Party. The indemnifications in this section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. Lessor shall be responsible for, and shall promptly conduct any investigation and remediation as required by any Applicable Law, all spills or other releases of any Hazardous Substance not caused solely by Lessee, that have occurred or which may occur on the Property. Lessor agrees to indemnify, defend and hold Lessee harmless from Environmental Claims resulting from actions on the Property not caused by Lessee. This Section 14 shall survive the termination or expiration of this Lease.

15. **Maintenance.** Throughout the Lease Term, any Extension Term and through the Removal and Restoration Date, Lessee shall have the right: (i) to add to, remove or modify the System or any part thereof, and (ii) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, 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 sole discretion determines to be necessary, without prior notice to or consent of Lessor, and all at the sole cost and expense of Lessee. Lessee, at its expense, may use any and all appropriate means of restricting access to the System and Premises, including without limitation, the construction of a fence.

16. **Insurance.**

(a) **Generally.** Lessor and Lessee shall each maintain the insurance coverages set forth in Exhibit D in full force and effect throughout the Lease Term either through insurance policies, or self-insured programs reasonably acceptable to the other Party. Each Party, upon request, but not more than twice in any twelve (12) month period, shall furnish current certificates evidencing that the coverage required is being maintained.

(b) **Waiver of Subrogation.** Each Party hereby waives any right of recovery against the other for injury or loss to personal property due to hazards covered by insurance obtained with respect to the Property or Premises, including the improvements and installations thereon.

(c) **System Loss.** In the event of any harm to the System that, in the reasonable judgment of Lessee, results in total damage, destruction or loss of the System ("***System Loss***"), Lessee shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Lessor whether Lessee is willing, notwithstanding such System Loss, to repair or replace the System and to continue the Lease. In the event that Lessee notifies Lessor that Lessee is not willing to repair or replace the System, the Lease will terminate automatically effective upon the date of such System Loss, and Lessee shall be entitled to all proceeds of its insurance policies with respect to the System Loss and Lessor shall promptly return to Lessee any prepaid but unearned rent.

17. **Taxes.** As required by RSA 72:23, I(b), failure of the Lessee to pay the duly assessed personal and real estate taxes when due shall be cause to terminate said Lease or Agreement by the Lessor. Lessee shall pay any real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority which are directly attributable to Lessee's occupancy and use of the Premises (or any portion or component thereof, including, but not limited to the System) and ownership of the System. Further, Lessor shall provide to Lessee any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section 17.

18. **Liability and Indemnity.**

(k) Each Party as indemnitor shall indemnify, defend, and hold harmless the other Party and its Affiliates against and from any and all loss, liability, damage, claim, cost, charge, demand, or expense (including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property arising out of or in connection with the negligent acts or omissions or willful misconduct of the indemnitor or a breach of any obligation of the indemnitor under this Lease, except to the extent caused by the negligent acts or omissions or willful misconduct of the indemnified party.

(b) Lessee shall not be responsible to Lessor or any third party, for any claims, costs or damages, including fines or penalties, attributable to any pre-existing violations of Applicable Laws by any party other than Lessee. This Section 18 shall survive the termination of this Lease.

19. **Casualty.** In the event the Premises or access thereto shall be so damaged or destroyed by fire or other casualty so as to make the use of the Premises impractical, as determined by Lessee in its sole and absolute discretion, then Lessee may elect to terminate this Lease without penalty or further liability upon notice to Lessor effective as of a date of such damage or destruction. In the event of such termination, Lessee shall remove and restore in accordance with Section 5(c). If Lessee does not elect to terminate this Lease in the event of such a casualty, the Rent shall be abated until such time as the use thereof is restored and upon Lessor's restoration of the Premises, Lessee shall have the sole responsibility for restoration of the System.

20. **Condemnation.** In the event the Premises or Property are transferred to a condemning authority pursuant to a taking of all or a portion of the Property sufficient in Lessee's determination to render the Premises unsuitable for Lessee's use or to negatively impact the access to the Premises, Lessee shall have the right to terminate this Lease immediately upon 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 as well as any damages suffered thereby.

21. **Assignment**

Lessee shall not assign any of its rights, duties or obligations under this Lease without the prior consent of Lessor, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Lessee may, without consent from Lessor, assign any of its rights, duties or obligations under this Lease: (i) to a Financing Party, (ii) to one or more of its Affiliates of equal or greater creditworthiness as Lessee, (iii) to one or more third parties in connection with a collateral assignment of rights, mortgage, pledge or otherwise, (iv) to any Person or entity succeeding to all or substantially all of the stock or assets of Lessee, provided that such assignee can provide reasonable evidence of its financial and technical wherewithal to perform the obligations of assignor, or (v) to a successor entity in a merger or acquisition transaction. In order to facilitate financing of the System, Lessor agrees to enter into a consent and assignment agreement with Lessee's Financing Party substantially in the form attached hereto as Exhibit E. An assignment by either Party in accordance with this Section 21 shall relieve the assignor of its obligations hereunder, except with respect to

undisputed payments due by the assignor as of the effective date of the assignment, which obligations shall be performed by assignor or assignee as a condition precedent to such assignment

22. **Defaults and Remedies.**

(a) **Default.** If a Party shall be in default (the “***Defaulting Party***”) if it fails to perform any covenant or obligations hereunder or commits a material breach of this Lease (each an “***Event of Default***”) and fails to cure such Event of Default within twenty (20) Business Days after receiving notice from the other Party (the “***Non-Defaulting Party***”) regarding the failure to perform such covenant or obligation set forth in this Lease or the material breach, stating with particularity the nature and extent of such Event of Default and specifying the method of cure (a “***Notice of Default***”); provided, however, that if the nature or extent of the obligation or obligations is such that more than twenty (20) Business Days are required to complete the cure, despite the exercise of commercially reasonable diligence, then the Defaulting Party shall not be in default if it commences such performance within such twenty (20) Business Day period and thereafter pursues the same to completion with commercially reasonable diligence.

(b) **Bankruptcy.** It shall also be an Event of Default by either Party if such Party becomes subject to a Bankruptcy Event.

(c) **Remedies.** If the Event of Default is not cured within the cure period provided for in this Lease, 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 or further liability, all of which remedies shall be cumulative.

23. **Notices.** All Notices under this Lease shall be made in writing to the Addresses and Persons specified on the Cover Sheet. Notices shall be delivered by hand delivery, regular overnight delivery service, sent by registered or certified mail, return receipt requested or email. Email notices shall require confirmation of receipt. Notices shall be deemed to have been received when delivered as shown on the records or manifest of such courier, delivery service or the U.S. Postal Service. 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 23. 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 and can demonstrate that the notice in question was received.

24. **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.

25. **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.

26. **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.

27. **Choice of Law.** This Lease shall be construed in accordance with the laws of the State of New Hampshire, without regard to its conflict of law principles.

28. **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.

29. **Counterparts.** This Lease may be executed in any number of counterparts, which shall together constitute one and the same agreement. Each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the Parties.

30. **Entire Lease.** This Lease, including the Cover Sheet and all Exhibits, represents the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and therein and supersedes all prior written or oral negotiations, representations, communications and agreements between said parties with respect to said subject matter. 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.

31. **Further Assurances.** Upon the receipt of a request from the other Party or a Financing Party, each Party shall execute such commercially reasonable additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof, including at the requesting Party's expense, entering into any consents, assignments, affidavits, estoppels and other documents as may be reasonably required by such Party's lender to create, perfect or preserve its collateral interest in such Party's property or such party's rights and obligations under this Lease. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

32. **Dispute Resolution.**

In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, within a reasonable time after the claim, dispute or other matter in question has arisen, pursue all available legal and/or equitable remedies. The sole venue shall be the Hillsborough County Superior Court. The Parties, thus successors and assigns, hereby waived diversity jurisdiction under federal law.

33. **Force Majeure.**

Except as otherwise specifically provided in the Lease, neither Party shall be considered in breach of the Lease or liable for any delay or failure to comply with the Lease (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 33 shall immediately (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. If a Force Majeure Event shall have occurred that has prevented either Party from performing any of its material obligations hereunder and that has continued for a continuous period of one hundred twenty (120) days, then either Party shall have the right, but not the obligation, to terminate the Lease upon ninety (90) days' prior notice to the other Party without penalty or further liability. If at the end of such ninety (90) day period such Force Majeure Event shall still continue and the material obligation has not been able to be resumed to the reasonable satisfaction of the affected Party, the Lease shall terminate. Upon such termination due to a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination or those which expressly survive the termination or expiration of the Lease pursuant to the terms hereof). If, at the end of such ninety (90) day period such Force Majeure Event is no longer continuing, the Lease shall remain in full force and effect, and the Party's termination notice shall be deemed to have been withdrawn. Rent shall abate for any period during which Lessee is not able to operate the System in the manner contemplated herein.

34. **Attorney's Fees.** In the event there is a lawsuit, action, or proceeding between Lessee and Lessor, which arises from or concerns this Lease, whether that lawsuit, action, or proceeding involves causes of action in contract or in tort, at law or in equity, the substantially prevailing party shall be entitled to recover all costs

and expenses, including its actual attorneys' and expert or consultants' fees and court costs, in such lawsuit, action or proceeding.

35. **Notice of Lease.** Lessor agrees to cooperate with Lessee in executing any documents necessary to protect Lessee's rights in or use of the Premises. A Notice of Lease in substantially the form attached hereto as Exhibit F may be recorded in place of this Lease by Lessee.

36. **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.

37. **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.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK – SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year set forth on the Effective Date, set forth on the Cover Sheet.

LESSOR:

By: _____
Name: _____
Title: _____

LESSEE:
Water Street Solar 1, LLC

By: _____
Name: _____
Title: _____

EXHIBIT A
DESCRIPTION OF PROPERTY AND PREMISES

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

EXHIBIT B
SYSTEM SPECIFICATIONS AND SITE PLAN

EXHIBIT C
DEFINITIONS

“*Affiliate*” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with such Person or is a director or officer of such Person or of an Affiliate of such Person.

“*Applicable Law*” means the laws of New Hampshire, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, Environmental Law, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“*Bankruptcy Event*” means with respect to a Party, that either: such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of one hundred eighty (180) days.

“*Business Day*” means any day other than Saturday, Sunday or any other day on which banking institutions in the state where the Property is located are required or authorized by Applicable Law to be closed for business.

“*Environmental Attributes and Incentives*” means any emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, directly or indirectly resulting from, attributable to or associated with the generation of energy by a solar renewable energy facility, whether existing as of the date of any Effective Date or thereafter, and whether as a result of any present or future local, state or federal laws or regulations or local, state, national or international voluntary program.

“*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.

“Expiration Date” has the meaning set forth on the Cover Sheet, as such date may be extended in accordance with the Lease.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Lessee (or an Affiliate of Lessee) leases the System or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide capital to Lessee (or an Affiliate of Lessee) with respect to the System. Lessee shall give Lessor notice of and the contact information for any such Financing Party within one hundred twenty (120) days after the Commencement Date and shall confirm any change in such contact information upon request of Lessor.

“Force Majeure Event” means, when used in connection with the performance of a Party’s obligations under this Lease, any events or circumstances beyond the affected Party’s reasonable control that arise after the Effective Date, to the extent not caused by the acts or omissions of (and are otherwise unavoidable, or beyond the reasonable control of, and could not have been prevented or overcome by the reasonable efforts and diligence of) such Party and which materially and adversely affects such Party’s performance of its obligations under this Agreement. Force Majeure Event includes but is not limited to the following: (i) war, riot, acts of a public enemy or other civil disturbance; (ii) acts of God, including but not limited to, earthquakes, tornados, typhoons, lightning, blizzards, hurricanes and landslides of the type which would, under normal circumstances and typical insurance policies, constitute an event of insurable loss; (iii) acts of, or unreasonably excessive failures to act by, any Governmental Authority including changes in Applicable Law after the Effective Date (other than acts of Governmental Authorities in response to a Party’s failure to comply with existing Applicable Laws as required in connection with performance under this Agreement); and (iv) strikes, walkouts, lockouts or similar industrial or labor actions or disputes not caused by, specific to employees of, or the result of an unfair labor practice or other unlawful activity by the asserting Party.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization 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.

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

“Lease Term” means the term of years that commences on the Lease Commencement Date and expires at 11:59 p.m. on the Expiration Date.

“Lessee Party” or **“Lessee Parties”** means, individually or collectively, 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, or successors or assigns.

“Lessor Parties” means, individually or collectively, Lessor, and any of their authorized representatives, agents or employees.

“Local Electric Utility” means the local electric distribution owner and operator providing electric distribution services to Lessee and also providing electric distribution and interconnection services to Lessee for Lessee’s System.

“MNDA” means the “Mutual Non-Disclosure And Non-Circumvention Agreement entered into between the Parties dated []).

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the Independent System Operators-New England (ISO-NE), which are required in order to develop, construct, operate, maintain, improve, refurbish and retire the System or to schedule and deliver the electric energy produced by the System to the Local Electric Utility, including an authorization to construct or a conditional use permit.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any other person or entity, and any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

“Removal and Restoration Date” means the date not be later than one hundred-eighty (180) days after either the Expiration Date or the date of earlier termination of this Lease, if applicable, when Lessee shall complete the removal of all of its tangible property comprising the System from the Premises and restore the Premises to its original condition, normal wear and tear excepted and provided that Lessee shall not be required to restore the Premises to its original grade.

“System” means the solar photovoltaic System installed and operating at the Premises, as more particularly described and depicted in **Exhibit B** attached hereto and incorporated herein, together with all electrical production, transmission and distribution facilities, hardware and materials, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, cabling, wires, overhead and underground control, communications and radio relay systems, interconnection facilities and/or switching facilities, transformers and current inverters, control boxes and computer monitoring equipment systems, structures, features and improvements necessary to produce electric energy at such facility (excluding power to the Property).

**EXHIBIT D
INSURANCE**

The Parties shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies, or acceptable self-insured programs:

Lessor: [To be discussed] – Peterborough to provide information on their current coverages.

Lessee: (i) Workers' Compensation at statutory limits and Employer's Liability Coverage of at least \$1,000,000.00 per occurrence, (ii) Commercial General Liability Coverage (Occurrence Form) with limits of not less than \$2,000,000.00 general aggregate, \$1,000,000.00 per occurrence, and (iii) Automobile Liability Coverage of at least \$1,000,000.00 per occurrence for bodily injury and property damage. For any claims resulting from the operation, maintenance and repair of the System, Lessee's insurance coverage shall be primary. Any insurance or self-insurance maintained by Lessor shall be in excess of Lessee's insurance and shall not contribute with it.

EXHIBIT E
FORM OF CONSENT AND ASSIGNMENT

*Borrego to provide

**EXHIBIT F
NOTICE OF LEASE**

LESSOR: _____, a _____

LESSEE: Borrego Solar Systems, Inc., a California corporation

DESCRIPTION OF PREMISES: The Premises consists of approximately _____ acres located at the Property owned by Lessor and commonly known as _____, MA. The Property is more particularly described in Exhibit A attached hereto.

For Lessor's title to the Property, reference is herein made to Deed dated _____ and recorded at the _____ County Registry of Deeds at Book _____, Page _____.

OPTION COMMENCEMENT DATE: The date the Lease is fully executed. (_____, 20__)

LEASE COMMENCEMENT DATE: The date Lessee exercises the Option.

TERM OF OPTION: Five Hundred Forty (540) days, Lessee has the right to extend the term of the Option for one (1) additional five hundred forty (540) day term, as provided in the Lease.

TERM OF LEASE: Approximately ten (10) years with an additional one hundred eighty (180) days to remove the System and restore the Premises.

RIGHTS OF EXTENSION: Lessee has the option to extend the term of the Lease for two (2) additional and successive five-year terms, as provided in the Lease.

NO FIXTURE: The System, as defined in the Lease, installed and operated by Lessee at the Premises shall not be deemed a fixture. The System is Lessee's personal property and Lessor has no right, title or interest in the System. Further, Lessor has waived all right of levy for rent, all claims and demands against the System and all rights it may have to place a lien on the System.

LESSEE:
BORREGO SOLAR SYSTEMS, INC.

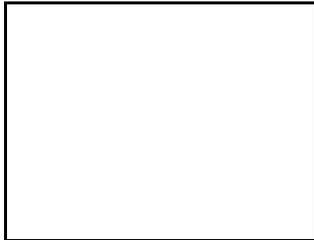
LESSOR:

By: _____
Name: _____
Title: _____
Duly Authorized
Date: _____

By: _____
Name: _____
Title: _____
Duly Authorized
Date: _____

COMMONWEALTH OF MASSACHUSETTS)
) ss.
COUNTY OF _____)

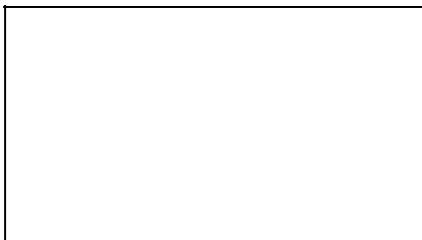
On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (*name of document signer*), proved **to me through satisfactory evidence of identification, which were** _____ (*source of identification*) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Notary Public
Print Name _____
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (*name of document signer*), proved **to me through satisfactory evidence of identification, which were** _____ (*source of identification*) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

**Memorandum of Lease Exhibit A
Legal Description**

The Property is legally described as follows:

Lease

Exhibit A – subdivision plan will likely be the site plan

Site plan will show and include utility easements, lay down area.

License will be put in place for the lay down area.

Add a term that they'll provide the CAD file and survey. Woodard and Curran.

Taxes - Peterborough, figure out what the taxes would be on 5 acres of low value land.

In NH only taxes on real estate

Income generating property

Reverter – put in the PPA, extension subject to their consent and discretion. If they decline we could sell to a third party.