

cc: Accountant
Assessors

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

between

Douglas Solar, LLC
and

THE TOWN OF DOUGLAS

dated as of December 6, 2011

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

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR REAL PROPERTY AND PERSONAL PROPERTY (this "Agreement") is made and entered into as of December 6, 2011 by and between [name of project entity], a subsidiary of Con Edison Development ("Developer"), and the TOWN OF DOUGLAS, a municipal corporation duly established by law and located in Worcester County, Commonwealth of Massachusetts (the "Town"). Developer and the Town are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party".

WHEREAS, Developer plans to build and operate an photovoltaic power plant (the "Project") with an expected nameplate capacity of approximately 2.0 megawatts on approximately a twenty one acre parcel of land designated 188 – 28 located at Brookline Terrace, Douglas, Worcester County, Massachusetts.(the "Property");

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

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

WHEREAS, the Parties intend that, during the term of the Agreement, Developer will not be assessed for any statutory real and personal property taxes to which it might otherwise be subjected under Massachusetts law, and this Agreement will provide for the exclusive payments in lieu of such real and personal property taxes that Developer (or any successor owner of the Project) will be obligated to make to the Town with respect to the Project during the term hereof, provided, however, 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 real or personal property taxes or substitutes for such taxes that Developer is otherwise obligated to pay the Town;

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

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 Real and Personal Property Taxes. Developer agrees to make payments to the Town in lieu of real and personal property taxes on and after the Completion Date (defined below) for a period of twenty (20) consecutive years, commencing with [fiscal tax year 2013 (the first quarterly payment date being August 1, 2012)], and ending with fiscal tax year 2033 (the last quarterly payment date being August 1, 2031), in the amounts per year in Exhibit A. Each annual payment will be paid to the Town in four (4) equal quarterly installments on or before August 1, November 1, February 1 and May 1 of each fiscal tax year during the term of this Agreement and the annual payment amount and payment date will be noted on a quarterly 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 A, 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 A.

2 Improvements or Additions, Retirements. 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 Project achieves its commercial operation date, but in no event later than September 30, 2012 (the "Completion Date"), 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 Completion Date, 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 Completion Date 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 (i) replacement of personal property or equipment 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 (ii) pollution control or other equipment that is exempted from taxation by the provisions of General Laws Chapter 59, section 5 (44) or other applicable laws or regulations in effect from time to time or (iii) 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.

3. Calculation of Adjustment. Except as otherwise provided in Paragraph 2, to the extent that on or after the Completion Date, Developer makes capital improvements to the Project or adds new personal property or equipment to the Project that would 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 product of the mill rate per thousand dollars of valuation at the time of the capital improvement multiplied by the actual cost of the capital improvement or additional personal property and levelized over twenty years. . To the extent that on or after the Completion Date, Developer retires or removes property from the Project, the remaining annual payments in lieu of taxes under this Agreement will be decreased by the product of the mill rate per thousand dollars of valuation at the time of the removal of property times the original cost of such retired property. Except as otherwise provided in Paragraph 2, in the event that new property or equipment added to the Project replaces existing property or equipment, the depreciated original cost (net book value) of the existing property or equipment will be deducted from the actual value of the new property or equipment for purposes of the payment in lieu of tax adjustment.

4. Inventory. Within six (6) months after the Completion Date, the Parties will agree on a mutually acceptable inventory of personal property and real property incorporated into the Project as of the Completion Date (the "Inventory"). The Inventory will itemize and indicate the current value of all personal property and real property subject to taxation and adjustment pursuant to Paragraph 3 and all personal property and real property exempted from taxation and adjustment pursuant to Paragraph 3. The general categories for the Inventory are listed in Exhibit B. 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 in connection with the preparation of the Inventory. Developer will update the Inventory annually on or before September 30 of each year, and an updated written Inventory will be provided to the Town on or before October 15 of each year. The Town, its officers, employees, consultants and attorneys will have the right to periodically inspect the Project on reasonable prior notice to Developer, subject to the Town agreeing to comply with all Developer safety requirements, and to review documents in the possession of Developer that relate to the inventoried property for the purpose of verifying that Developer has accurately updated the Inventory.

5. Payment Collection. The provisions of G.L. c.60 and other applicable law will govern the collection of any payments in lieu of taxes provided for in this Agreement as though they were real or personal property taxes due and payable to the Town.

6. Tax Status, Separate Tax Lot. The Town agrees that during the term of this Agreement, the Town will not assess Developer for any real estate and personal property taxes with respect to the Project or the Property to which Developer might otherwise be subject under Massachusetts law, and the Town agrees that this Agreement will exclusively govern the payments of all ad valorem real estate and personal property taxes and payments in lieu of such taxes that Developer will be obligated to make to the Town with respect to the Project and the Property, provided, however, that this Agreement is not intended to affect, and will not preclude, other assessments of general applicability by the Town for excise taxes on vehicles due pursuant to G.L. c.60A and for

services provided by the Town to the Project, including but not limited to, water and sewer services. The Town agrees that no real or personal property taxes will be due from or assessed to Developer with regard to the Property or the associated real or personal property other than the payments in lieu of taxes described in this Agreement.

7. Successors and Assigns. This Agreement will be binding upon the successors and assigns of Developer, and the obligations created hereunder will run with the Property and the Project. In the event that Developer sells, transfers, leases or assigns the Property or all or substantially all of its interest in the Project, this Agreement will thereafter be binding on the purchaser, transferee or assignee. A Notice of this Agreement will be recorded in the applicable Registry of Deeds forthwith upon execution.

8. Water and Sewer Rates and Fees. The Town agrees that it will not charge Developer water and sewer rates or connection fees greater than the prevailing rates and fees applicable to all other commercial users in the Town. In the event that the Town ever privatizes, leases, sells or otherwise transfers its water or sewer system or its waste water treatment plant to a private owner or operator, this provision will be binding on such successor owner or operator.

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

10. Additional Documentation and Actions. Each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such additional instruments, certificates and documents, and take all such actions, as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement and, upon the exercise by a Party of any power, right, privilege or remedy pursuant to this Agreement that requires any consent, approval, registration, qualification or authorization of any third party, each Party will execute and deliver all applications, certifications, instruments and other documents and papers that the exercising Party may be so required to obtain.

11. Partial Invalidity. If, for any reason, including a change in applicable law, it is ever determined that this Agreement may only apply to personal property and not to both personal property and real property, then this Agreement will be deemed to apply only to personal property, the Town will thereafter be entitled to assess and tax the real property in accordance with G.L. c. 59 and G.L. c. 60, and Developer will be entitled to challenge such assessments and taxes in accordance with Massachusetts law, with the Parties having all rights of a Town and a taxpayer with regard to such real estate taxes. Under such circumstances, this Agreement will not apply to such real estate taxes and the payments in lieu of taxes due under this Agreement will be decreased on an annual basis by the amount of real estate taxes actually paid to the Town for each year. If, for any reason, including a change in applicable law, it is ever determined that this Agreement may only apply to real property and not to both personal property and real property, then this Agreement shall terminate as of the date of such determination, and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist. The Parties will cooperate with each other, and use reasonable efforts to defend against and contest any challenge to this Agreement by a third party. If, for any reason, including a change in applicable law, a property tax is imposed on the Project or the Property in addition to the payments in lieu of taxes due under this Agreement, the payments in lieu of taxes due under this Agreement will be decreased on an annual basis by the amount of the property taxes actually paid to the Town for each year.

12. 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 otherwise. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

To: Developer

Douglas Solar, LLC
c/o Consolidated Edison
Development, Inc.
100 Summit Lake Drive, Suite 410
Valhalla, NY 10595
Attn: Director, Business
Development
Fax: (914) 993-2121
Email: robinsonm@coneddev.com

To: Town of Douglas

Board of Selectmen
Town of Douglas
29 Depot Street
Douglas, MA 01516

Fax: 508-476-4012

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.

13. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Developer and the Town each consent to the jurisdiction of the Massachusetts courts or other applicable agencies of the Commonwealth of Massachusetts regarding any and all matters, including interpretation or enforcement of this

Agreement or any of its provisions.

14. Good Faith. The Town and Developer shall act in good faith to carry out and implement this Agreement.

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

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

In the event an event of Force Majeure occurs during the term of this Agreement with respect to any portion of the Property or Project that renders the Property or Project unusable for the customary purpose of the production of electricity for a period of more than sixty (60) days, then Developer may, at its election, notify the Town of the existence of this condition as well as of its decision whether or not to rebuild that portion of the Property or Project so damaged or destroyed or taken.

If Developer elects not to rebuild, then it may notify the Town of its termination of this Agreement and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist.

16. Covenants of Developer. During the term of the Agreement, Developer will not voluntarily do any of the following:

- a. seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement, except as expressly provided herein;
- b. convey by sale, lease or otherwise any interest in the premises to any entity or organization that qualifies as a charitable organization pursuant to M.G.L. c.59 Section 5 (Third); or
- c. fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement.

17. Covenants of the Town of Douglas. So long as Developer is not in breach of this Agreement during its term, the Town will not do any of the following:

- a. seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement;
 - b. seek to collect from Developer any property tax upon the Property or the improvements thereon (including the Project) in addition to the amounts herein;
 - c. impose any lien or other encumbrance upon the Property or the improvements thereon (including the Project) except as is expressly provided herein;
18. All building permit fees for the entire project shall in no event total more than \$20,000.
19. The Developer shall make a onetime gift payment to the Town of Douglas in the amount of \$2,000 for the purpose of helping to defray the consulting costs related to the development and approval of the PILOT agreement. This payment shall be made prior to December 15, 2011.
20. The Developer shall make reasonable efforts to cooperate and coordinate with the Douglas School Department to provide information for inclusion in the school curriculum related to the science, economics and policy surrounding solar energy. To the extent feasible, and consistent with safety, legal, and insurance requirements, the Developer will allow the Facility to be occasionally used for educational presentations and tours for school personnel and students.
21. Certification of Tax Compliance – Pursuant to G.L. c. 62C, s49A the undersigned Developer by its duly authorized representative certifies that it is in tax compliance with the tax laws of the Commonwealth of Massachusetts.

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 DOUGLAS

By: Name:

Title:

(Corporation by its duly authorized representative. Attach certificate of corporate authority)

By:

Name: M. NOTES

Title:

Exhibit A

<u>Fiscal Tax Year</u>	<u>Annual Payment</u>
2013	\$48,950
2014	\$48,950
2015	\$48,950
2016	\$48,950
2017	\$48,950
2018	\$48,950
2019	\$48,950
2020	\$48,950
2021	\$48,950
2022	\$48,950
2023	\$48,950
2024	\$48,950
2025	\$48,950
2026	\$48,950
2027	\$48,950
2028	\$48,950
2029	\$48,950
2030	\$48,950
2031	\$48,950
2032	\$48,950

Exhibit B

CATEGORIES OF INVENTORY

A. Real and Personal Property Subject to Taxation.

B. Real and Personal Property Exempted from Taxation.

Real property described above as well as personalty associated with 8600 solar photovoltaic panels, inverters and related equipment with an estimated value of \$7mm.

Certificate of Tax Compliance

Pursuant to M.G.L. Ch. 62C, Section 49A, I certify under the Penalties of Perjury That I, To My Best Knowledge and Belief, Have Filed All Massachusetts State Tax Returns and have paid ALL Massachusetts State and Local Taxes Required under Law.

Marka Hoyer

Signature

VICE PRESIDENT

Title

Douglas Solar LLC

Company Name

c/o Con Edison Development, Inc.

Street and No.

100 Summit Lake Drive, Suite 410

Valhalla, NY 10595

Town

State

914-993-2166

Tel. No.

914-993-2121

Fax No

21-2830170

Social Security No.

or

Federal Identification No.