

PAYMENT IN LIEU OF PERSONAL PROPERTY TAXES

This Agreement for Payment in Lieu of Taxes for Personal Property (hereinafter the "Agreement") is made and entered into as of the 4th day of June, 2019 by and between **Douglas Renewables, LLC**, a Delaware limited liability company (hereinafter "Developer"), or its assign, and the **Town of Douglas**, a municipal corporation duly established and existing under the laws of the Commonwealth of Massachusetts with an address of 29 Depot Street, Douglas, Massachusetts 01516 (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 plans to build, own and operate a photovoltaic generating facility and ancillary equipment (the "Project") with an expected nameplate capacity of approximately 6.5 MW DC on approximately 31 acres of lease area on a parcel of land located off of West Street, Douglas, Massachusetts, as more particularly described in Exhibit A (the "Project Site"); and

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 personal property taxes on the Project, in accordance with Chapter 59, Section 38H of the General Laws of Massachusetts, as amended (Acts of 1997 Chapter 164, Section 71(b), as amended) (hereinafter the "PILOT Statute") and the Massachusetts Department of Revenue regulations adopted in connection therewith; 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, the Parties intend that, during the term of the Agreement, Developer will not be assessed for any statutory 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 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 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, 2019 for a period of twenty (20) consecutive years (hereinafter the "Term"), commencing with Fiscal Year 2020 (the first quarterly payment date being August 1, 2019), and ending with fiscal tax year 2040 (the last quarterly payment date being May 1, 2039), the amount per year in Exhibit B. 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. Notwithstanding the foregoing, in the event that all or a portion of the Project has not been commissioned as of January 1, 2020, the Term will be adjusted to begin with the first fiscal year following the first January 1 on which all or a portion of the Project has been commissioned. 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.

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 (hereinafter 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 reinvests 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 Chapter 59, Section 5 (44) of the General Laws of Massachusetts 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 generating capacity of the Project 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. To the extent that on or after the Completion Date, Developer retires or removes property from the Project 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.

4. INVENTORY.

During the Term, within six (6) months after the Completion Date, the Parties will agree on a mutually acceptable inventory of personal property incorporated into the Project as of the Completion Date (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. Upon request by the Town, Developer will update the Inventory annually on or before September 30 of each year following the first anniversary of the Completion Date, and an updated written Inventory (together with a statement regarding the Project's generating capacity) 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 at reasonable times and 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 parties hereto agree that the provisions of Chapter 60 of the General Laws of Massachusetts 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 property taxes due and payable to the Town. The Developer acknowledges that if it is not Owner of the Project Site then the Owner of the Project Site has expressly agreed to this provision in the Site Lease to the Project Site. The Developer as owner of the Inventory (also known as "the Property") hereby expressly agrees and assents to this provision of this paragraph.

6. TAX STATUS, SEPARATE TAX LOT.

The Developer expressly understands that the Town will continue to assess the real estate on which the project is constructed at its full and fair cash value (not including the solar facility improvements) 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. However, the Town, during the term of this Agreement, shall not assess Developer (or other record owner of the Project Site) for any personal property taxes with respect to the Project or the Property to which Developer (or such other record owner) might otherwise be subject under Massachusetts law. For avoidance of doubt, the Town agrees that during the Term this Agreement will exclusively govern the payments of all 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 Chapter 60A of the General Laws of Massachusetts and for services provided by the Town to the Project, including but not limited to, water and sewer services. Further, the Town agrees that during the Term no personal property taxes will be due from or assessed to Developer regarding the Property or the associated 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 as owner of the Project, and the obligations created hereunder will run with the Property and the Project.

Developer may assign this Agreement in whole or in part with the advance written consent of the Town, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, in the event that Developer sells, transfers, or assigns the Property and/or all or substantially all of its interest in the Project, this Agreement shall (without prior notice to or consent of the Town) be assigned to and will thereafter be binding on such purchaser, transferee or assignee as may thereafter own and hold title to the Project and the Property.

8. 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 Chapter 59, Section 38H of the Massachusetts General Laws. 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. 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.

9. 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 reasonably required to obtain.

10. NOTICES.

All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and given to the Parties at their respective addresses set forth below, and shall be deemed given when delivered, if personally delivered, or upon the third day after deposit with the United States Postal Service, if mailed by United States registered or certified mail, postage prepaid, return receipt requested, or upon the day following deposit with a nationally recognized overnight courier, if sent overnight by such courier. Either Party may change the address to which future notices should be sent hereunder by providing written notice of such change of address to the other Party in accordance with the notice provisions of this paragraph.

To Developer:	Douglas Renewables, LLC Attn: Chris Clark, SVP 101 Summer Street, 2 nd Fl Boston, MA 02110 cclark@nexamp.com
To Town:	Town of Douglas Attn: Matthew Wojcik, Town Administrator 29 Depot Street Douglas, MA 01516 mwojcik@douglasma.org
with copies to:	Board of Assessors Town of Douglas 29 Depot Street Douglas, MA 01516

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.

11. APPLICABLE LAW.

This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Developer, Lender 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.

12. GOOD FAITH.

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

13. FORCE MAJEURE.

The Developer and Town both recognize that there is the possibility during the Term that all or a portion of the Property or Project maybe 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; or
- 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 all or a portion of the 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 in writing, and the Property and Project will thereafter make payments hereunder on a pro-rated basis (calculated in the manner set forth in Section 3).

14. 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; or

- b. convey by sale, lease or otherwise any interest in the Project to any entity or organization that qualifies as a charitable organization pursuant to Chapter 59 Section 5 (Third) of the General Laws of Massachusetts unless this Agreement or comparable substitute agreement is lawfully reaffirmed to ensure continuation of the payments hereunder; or
- c. fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement.

15. COVENANTS OF THE TOWN OF DOUGLAS.

So long as Developer is not in breach of this Agreement during its Term, which breach remains uncured by Developer or Lender (as hereinafter defined, such Lender having the right, but not the obligation to act on Developer's behalf to cure any breach or default by Developer) for more than thirty (30) days following written notice of such breach delivered by the Town to Developer and Lender in accordance with the notice provisions hereof or, in the event of a default, other than a payment default, which Developer is not reasonably capable of curing within such thirty (30) day period, such longer period of time as Developer reasonably requires to effectuate such cure, the Town will not do any of the following:

- a. seek to invalidate this Agreement or otherwise take apposition adverse to the purpose or validity of this Agreement; or
- b. seek to collect from Developer any personal property tax upon the Property or the improvements thereon (including the Project) in addition to the amounts herein except as provided in Paragraph 16 hereof; or
- c. impose any lien or other encumbrance upon the Property or the improvements thereon (including the Project) for non-payment of personal property taxes except as is provided by the provisions of Chapter 60 of the General Laws of Massachusetts or expressly provided herein.

16. 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 10 hereof, the "Lender") by certified mail at the same time such 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.

17. CERTIFICATION OF TAX COMPLIANCE.

Pursuant to Chapter 62C, Section 49A of the General Laws of Massachusetts the undersigned Developer by its duly authorized representative certifies that it is in tax compliance with the tax laws of the Commonwealth of Massachusetts. Further, the Developer hereby certifies that it and the owner of the Project Site are current and in compliance with all real estate taxes, personal property taxes and other municipal charges due the Town of Douglas 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 Douglas 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 Douglas and the amount of total personal property tax that otherwise would have been assessed by the Town of Douglas for the Project from January 1, 2019 to the date of said written notice had the personal property of Project been assessed by the Town of Douglas 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.

18. COMPLIANCE WITH PILOT STATUTE.

The Town shall timely comply with any recordkeeping, filing or other requirements mandated by the Massachusetts Department of Revenue in connection with the Department's implementation of the PILOT Statute.

19. 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 (i) undertake best efforts to amend and or reauthorize this Agreement so as to render all material provisions lawful, valid and enforceable, and (ii) if such efforts are unsuccessful, undertake reasonable efforts, including without limitation, seeking all necessary approvals, to replicate the benefits and burdens of this Agreement in the form of a tax increment financing agreement pursuant to Chapter 40, Section 59 of the General Laws of Massachusetts.

20. REPRESENTATIONS AND WARRANTIES; MISCELLANEOUS.

Each Party represents and warrants to the other that it has the power to enter into this Agreement, that the execution, delivery and performance of this Agreement by such Party has

been duly authorized and that this Agreement is a legal, valid and binding obligation of such Party enforceable in accordance with its terms. If any section, sentence, clause, or other portion of this Agreement is for any reason held invalid or unconstitutional by any court, federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof. The paragraph headings contained herein are for convenience of reference only and shall not be used to interpret the substantive provisions of this Agreement, This Agreement shall be considered the joint work product of the Parties hereto, and shall not be construed against either Party by reason thereof. This Agreement contains the entire agreement between the Parties concerning its subject matter and supersedes all prior agreements between the Parties concerning such subject matter, whether written or oral. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument and shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to choice of law provisions.

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In Witness Whereof; the parties have executed their hands and seals on 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: Board of Selectmen

Title: _____

Date: May 21, 2019

Alit

Hall

MDM

Ph

MIT

DOUGLAS RENEWABLES, LLC

By: *Chris Clark* CHRIS CLARK

Title: SVP

Date: June 4, 2019

EXHIBIT A
PROJECT SITE

Legal Description:

The Property means the following:

- 1) An approximately 22-acre portion of the parcel of real property located south of West Street, Town of Douglas, County of Worcester, Commonwealth of Massachusetts, owned by Gadoury Homes, LLC, conveyed by the deed recorded on November 20, 2015 in the Worcester County Registry of Deeds at Book 54601, Page 200, containing approximately 49 acres, being all or parts of Douglas Assessors' parcel # 160-2, and;
- 2) An approximately 9-acre portion of the parcel of real property located south of West Street and north of Church Street, Town of Douglas, County of Worcester, Commonwealth of Massachusetts, owned by Chesebrough, LLC, conveyed by the deed recorded on December 31, 2001 in the Worcester County Registry of Deeds at Book 25628, Page 206, containing approximately 11 acres, being all or parts of Douglas Assessors' parcel # 173-14

(Douglas Assessors' Map follows this page)

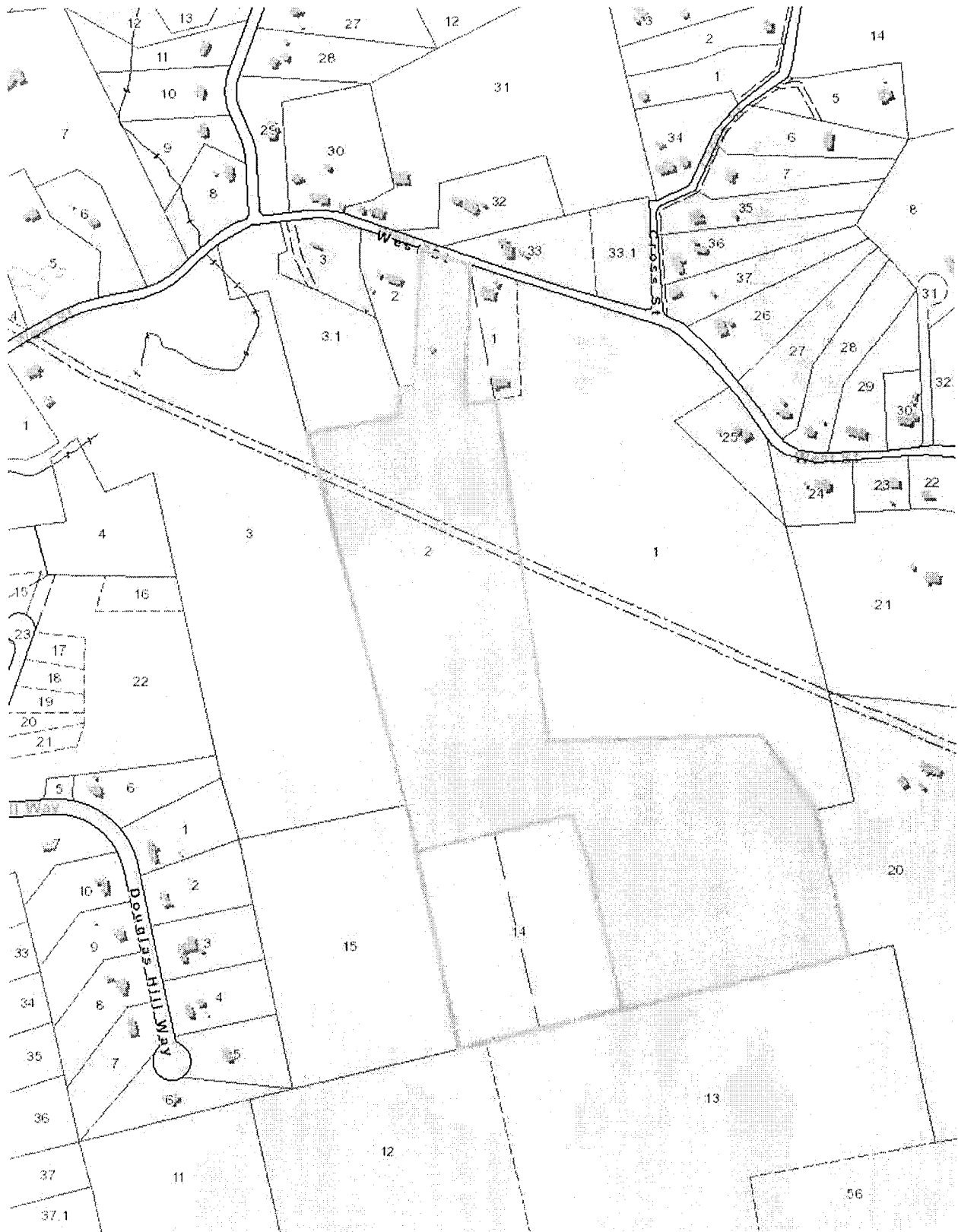


EXHIBIT B

AMOUNT OF PAYMENT IN LIEU OF PERSONAL PROPERTY TAX

Assuming Project size of 6.5 MW (DC), the payments would be per the following schedule, which reflects \$7,500 per MW (DC) and a 2.5% per annum escalation factor. Project size is subject to adjustment per the terms of the Agreement.

<u>Contract Year</u>	<u>\$/MW DC</u>	<u>Annual Payment (6.5 MW DC)</u>
1	\$ 7,500	\$ 48,750
2	\$ 7,688	\$ 49,969
3	\$ 7,880	\$ 51,218
4	\$ 8,077	\$ 52,498
5	\$ 8,279	\$ 53,811
6	\$ 8,486	\$ 55,156
7	\$ 8,698	\$ 56,535
8	\$ 8,915	\$ 57,948
9	\$ 9,138	\$ 59,397
10	\$ 9,366	\$ 60,882
11	\$ 9,601	\$ 62,404
12	\$ 9,841	\$ 63,964
13	\$ 10,087	\$ 65,563
14	\$ 10,339	\$ 67,202
15	\$ 10,597	\$ 68,882
16	\$ 10,862	\$ 70,605
17	\$ 11,134	\$ 72,370
18	\$ 11,412	\$ 74,179
19	\$ 11,697	\$ 76,033
20	\$ 11,990	\$ 77,934

EXHIBIT C
CATEGORIES OF INVENTORY

- A. Personal Property Subject to Taxation.
- B. Personal Property Exempted from Taxation.