

AGREEMENT FOR
PAYMENT IN LIEU OF TAXES FOR PERSONAL PROPERTY

This Agreement for Payment in Lieu of Taxes for Personal Property (hereinafter the "Agreement") is made and entered into as of the 21 day of June, 2019 by and between **ASD Wallum MA Solar LLC**, a Delaware limited liability company (hereinafter "Developer"), with an address of 1550 Wewatta Street, 4th Floor, Denver, Colorado 80202, 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 may be collectively referred to in this Agreement as the "Parties" and 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 11.2 MW DC on approximately 25 acres of leased area on a parcel of land located off of Wallum Lake Road, 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(b) of the General Laws of Massachusetts (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 attributable to the Project 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, 2020 for a period of twenty (20) consecutive Fiscal Years (defined on Exhibit B) (hereinafter the "Term"), commencing with Fiscal Year 2021 (the first quarterly payment date being August 1, 2020), and ending with Fiscal Year 2041 (the last quarterly payment date being May 1, 2041), the amount of such annual payments shall be calculated in accordance with 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 Year during the Term 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 the Completion Date (defined on Exhibit B) has not occurred by January 1, 2021, the Term will be adjusted to begin with the first Fiscal Year following the first January 1 after the Completion Date has occurred. Except to the extent that Paragraphs 2, 3 and 4 of this Agreement provide otherwise, Developer agrees that the payments in lieu of taxes under this Agreement ("PILOT Payments") 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 PILOT Payments 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 Completion Date, the remaining PILOT Payments 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 PILOT Payments will be decreased as described in Paragraph 3. Notwithstanding the foregoing, consistent with applicable Massachusetts Department of Revenue regulations, only the addition or removal of equipment on or after the Completion Date that would increase or decrease the generating capacity of the Project and thereby increase or decrease the value of 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 or decrease in PILOT Payments. No additional PILOT Payments 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; (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.

Within thirty (30) days following a change in DC Capacity (defined on Exhibit B), Developer shall deliver notice to the Town describing, in reasonable detail, (i) the equipment, improvements or other property effecting such change in DC Capacity, (ii) the resulting change in DC Capacity, and (iii) a proposed adjustment to the PILOT Payments.

3. CALCULATION OF ADJUSTMENT.

Except as otherwise provided in Paragraph 2, to the extent that 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 PILOT Payments will be increased by the percentage increase in generating capacity. To the extent that after the Completion Date, Developer retires or removes property from the Project to decrease the generating capacity of the Project, the remaining PILOT Payments will be decreased by the percentage decrease in generating capacity.

4. INVENTORY.

Within six (6) months after the Completion Date, Developer will deliver to the Town an inventory of personal property incorporated into the Project as of the Completion Date (hereinafter the "Inventory"). The Inventory will identify the aggregate full and fair cash 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 full and fair cash values for taxable items that will be incurred by Developer in completing the Project. Upon request by the Town, Developer will update the Inventory on or before September 30 of the subject 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 such year.

The Town, its officers, employees, consultants and attorneys (collectively, including the Town, the "Town Representatives") will have the right to inspect the Project, at reasonable times

and upon reasonable advance notice, no less than three (3) business days in advance of the proposed inspection, and subject to compliance with all Developer's safety requirements: (i) in connection with the preparation of the Inventory; or (ii) 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. Developer shall have the right to accompany any Town Representative on any such inspection.

5. PAYMENT COLLECTION

The provisions of Chapters 59 and 60 of the General Laws of Massachusetts and other applicable law will govern the collection of PILOT Payments due hereunder. The Developer agrees that all rights and remedies available to the Town for the collection of taxes shall apply to the PILOT Payments hereunder, including, but not limited to, all rights and remedies provided in Chapters 59 and 60 of the General Laws of Massachusetts, and that the provisions of the General Laws, including, but not limited to, Chapters 59 and 60, will govern the establishment of liens and the collection of any PILOT Payments hereunder as though said payments were personal property taxes due and payable to the Town.

6. TAX STATUS, SEPARATE TAX LOT.

The Developer expressly understands that the Town will continue to assess the Project Site at its full and fair cash value (not including the Project 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, shall not assess Developer (or other record owner of the Project Site) for any personal property taxes with respect to the Project or the Inventory 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 PILOT Payments that Developer will be obligated to make to the Town with respect to the Project and the Inventory; 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 Inventory or the associated personal property other than the PILOT Payments.

7. SUCCESSORS AND ASSIGNS.

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 Inventory 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 Inventory. Subject to the foregoing, 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 Inventory and the Project.

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(b) 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 PILOT Payments 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 PILOT Payments 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 PILOT Payments 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 may reasonably request 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 receiving Party at its address set

forth in the preamble hereto (with a copy, in the case of the Town, to the Board of Assessors), 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. 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, without reference to choice of law provisions. 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.

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 Inventory, the Project Site or the Project maybe damaged or destroyed or otherwise rendered unusable due to events beyond the control of the affected Party. These events are referred to as “Force Majeure” and, as used herein, include, 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 Inventory or the Project.

In the event an event of Force Majeure during the Term with respect to any portion of the Inventory, the Project Site or the 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 the Force Majeure as well as of its decision whether or not to rebuild that portion of the Inventory or Project so damaged or destroyed or taken. If Developer elects not to rebuild, then it may notify the Town in

writing, and the Inventory and Project will thereafter make payments hereunder on a pro-rated basis (calculated in the manner set forth in Paragraph 3).

14. COVENANTS OF DEVELOPER.

During the Term, 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.

During the 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; or
- b. seek to collect from Developer any personal property tax upon the Inventory or 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 Inventory, the Project Site or 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 breach sent to Developer, to any party providing financing to Developer in connection with the Project (as identified by Developer by notice to the Town in accordance with Paragraph 10 hereof, the "Lender") by certified mail at the same time such notice is sent to Developer. No such notice of breach to Developer shall be effective unless and until a copy of such notice has been delivered to Lender and Lender shall have the same time and rights to cure any breach as Developer hereunder, and the Town shall accept such

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.

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.

The Parties understand and agree that this Agreement shall be void and unenforceable if: (i) this Agreement, or any material portion of this Agreement, is determined or declared by a court or agency of competent jurisdiction to be illegal, void, or unenforceable; or (ii) Developer is determined or declared by a court or agency of competent jurisdiction to not be a "generation company" or "wholesale generation company" as those terms are used and/or defined in G.L. c. 59 § 38H(b), and G.L. c. 164 § 1. In the event this Agreement is declared void in accordance with this Paragraph 19, any payments due and/or made to the Town before the date of such declaration shall be and remain property of the Town, and to the extent permitted by law, shall be deemed full satisfaction of the taxes in lieu of which they were made.

20. TERMINATION.

The Town may terminate this Agreement on thirty (30) days prior written notice to Developer if Developer (i) materially breaches this Agreement, which breach remains uncured for more than thirty (30) days following written notice of such breach delivered by the Town to Developer and Lender or, in the event of a breach, other than a payment breach, 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, or (ii) files, or has had filed against it, a petition in bankruptcy, or is otherwise insolvent.

Developer may terminate this Agreement upon delivery of written notice thereof to the Town (i) at any time prior to the Completion Date, or (ii) in the event that the Town materially breaches this Agreement and fails to cure such breach within thirty (30) days following delivery of written notice of such failure to the Town from Developer. Upon such termination by

Developer, Developer will have no further obligations or liabilities under the terms of this Agreement.

21. REPRESENTATIONS AND WARRANTIES; MISCELLANEOUS.

Each Party represents and warrants to the other that (i) it has the power to enter into and deliver this Agreement, (ii) the execution, delivery and performance of this Agreement by such Party has been duly authorized, (iii) this Agreement is a legal, valid and binding obligation of such Party enforceable in accordance with its terms, and (iv) the performance of such Party's obligations hereunder will not violate or result in a breach or default of any agreement or instrument to which such Party is a party or is otherwise bound.

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, and shall not be construed against either Party by reason thereof. This Agreement may not be altered or amended, nor any rights hereunder waived, except by a written agreement executed by the Parties. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other (or further) exercise thereof. This Agreement and the Exhibits hereto, which are by this reference hereby incorporated herein for all purposes as if set forth in their entirety herein, 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 agreement.

[Remainder of Page Left Blank intentionally]

In Witness Whereof, the Parties have executed this Agreement by their hands and seals on the day and year first written above, and each signatory hereto 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



ASD WALLUM MA SOLAR LLC

By: AMP Solar Development Inc.

Its: Manager

By: *

David Rogers

President

Date: _____

** Signature on next page*

In Witness Whereof; the Parties have executed this Agreement by their hands and seals on the day and year first written above, and each signatory hereto represents that it is fully and duly authorized to act on behalf of and bind its principals.

TOWN OF DOUGLAS

By: *

Title: _____

Date: _____

* BOS Signatures on
previous page.

ASD WALLUM MA SOLAR LLC

By: AMP Solar Development Inc.
Its: Manager

By: DR
David Rogers
President

Date: June 24, 2019

EXHIBIT A

DESCRIPTION OF PROJECT SITE

Lease Area is situated on parcels of land in Douglas, Worcester, Massachusetts, on Wallum Lake Road, and is shown as a portion of the land on a plan entitled, "Lakewood Estates a Definitive Subdivision Plan in the Town of Douglas, Massachusetts," dated August 27, 2007, prepared by Yerka Engineering, LLC, and recorded with the Worcester County Registry of Deeds in Plan Book 896, Page 2, and also shown as a portion of land on a plan entitled, "Survey of Land Map Assessor's Map 299, Lot 8 Wallum Lake Road Worcester County Douglas, Massachusetts" dated January 10, 2007, prepared by Lunar Mapping Unlimited, and recorded with the Worcester County Registry of Deeds in Plan Book 860, Page 8.

Beginning at a point in the westerly sideline of Wallum Lake Road, said point being
N 29° 34' 22" W 86.07' from a drill hole found;

THENCE: S 60° 25' 38" W a distance of 456.82' to a point;
THENCE: S 01° 32' 25" E a distance of 521.84' to a point;
THENCE: S 88° 25' 17" W a distance of 1,286.65' to a point;
THENCE: N 01° 46' 59" W a distance of 146.99' to a point;
THENCE: S 85° 24' 02" W a distance of 193.47' to a point;
THENCE: N 72° 32' 02" W a distance of 222.99' to a point;
THENCE: N 12° 25' 45" W a distance of 201.76' to a point;
THENCE: N 06° 23' 33" W a distance of 348.89' to a point;
THENCE: N 82° 32' 31" W a distance of 58.03' to a point;
THENCE: N 00° 10' 19" E a distance of 372.70' to a point;
THENCE: N 88° 25' 16" E a distance of 264.16' to a point;
THENCE: N 01° 42' 49" E a distance of 270.49' to a point;
THENCE: S 88° 19' 24" E a distance of 1,626.17' to a point;
THENCE: S 28° 53' 56" E a distance of 200.00' to an iron rod;
THENCE: S 29° 34' 22" E a distance of 3.79' to a point;
THENCE: S 85° 10' 08" W a distance of 30.0' to a point;
THENCE: S 88° 25' 16" W a distance of 247.57' to a point;
THENCE: S 01° 32' 25" E a distance of 461.27' to a point;
THENCE: S 47° 34' 41" E a distance of 80.79' to a point;
THENCE: S 01° 34' 44" E a distance of 20.00' to a point;
THENCE: Northeasterly on a curve to the left, with a
radius of 300.00', a length of 138.86' to a point;
THENCE: N 60° 25' 38" E a distance of 310.60' to a point;
THENCE: S 29° 34' 22" E a distance of 50.00' to the point of beginning.

Said Lease Area contains a total of 52.34 +/- acres.

EXHIBIT B

AMOUNT OF PAYMENT IN LIEU OF PERSONAL PROPERTY TAX

Within thirty (30) days following the date that Developer receives from the local electric utility authorization to interconnect and commence operation of the Project (the "Completion Date"), Developer shall deliver notice to the Town notifying the Town of such date and the aggregate generating capacity of the Project in MWsDC, as installed, as of such date (the "DC Capacity"). During each fiscal tax year of the Town following the Completion Date (each, a "Fiscal Year"), the Developer will make annual PILOT Payments to the Town in the following amounts, payable in accordance with Paragraph 1 of the Agreement:

- i. for the first Fiscal Year, the PILOT Payment shall be an amount equal to the product of \$7,500 *multiplied by* the DC Capacity; and
- ii. during the second consecutive Fiscal Year and during each consecutive Fiscal Year thereafter, the PILOT Payments will be the amount of the PILOT Payment for the immediately prior Fiscal Year, plus 2.5% of such amount (as may be adjusted in accordance with Paragraphs 2 and 3 of the Agreement).

EXHIBIT C
CATEGORIES OF INVENTORY

- A. Personal Property Subject to Taxation.

- B. Personal Property Exempted from Taxation.