

Base Rent shown is for the twelve month period during Fiscal Year 2016/2017 unless otherwise noted													
#	Property Address	Lease Term	Tenant	MUNIS ACCT. #	Sq. Feet	Base Rent/SF	Base Rent/ mo	Addl Rent/ mo	Total Rent/ mo	Base Rent/ year	Addl Rent/Yr	Total Rent/ yr	Notes
1	100 Mona Terrace	7/1/2014 - 6/30/2020	A Child's Garden	42512-00017	10,000	\$6.85	\$5,708	\$400	\$6,108	\$68,500	\$4,800	\$73,300	
2	1443 Stratfield Road	1/1/2016-12/31/2018	American Legion	42512-00016	1,824	N/A	\$0	\$0	\$0	\$1	\$0	\$1	
3	197 Reef Road	Use by Deed and Agreement	American Legion	42512-00016	2,962	N/A	\$0	\$0	\$0	\$0	\$0	\$0	
4	Congress Street	6/26/2015-6/25/2016 (Lease in negotiation)	AT&T	42512-00027	Cell Tower	N/A	\$35,163	\$0	\$35,163	\$50,084	\$0	\$50,084	
5	100 Mona Terrace	1/1/2016 - 12/31/2017	Center For Women & Families	42512-00013	150	\$12.00	\$150	\$0	\$150	\$1,800	\$0	\$1,800	
6	Patio at 1435 Post Road	Seasonal - 5/1/2016 - 10/31/2016	Centro Ristorante	42512-00018	809	\$12.98	\$1,750	\$0	\$1,750	\$10,500	\$0	\$10,500	May 2016 - October 2016 revenue shown. Rental Period = 6 months.
7	Sidewalk at 1326 Post Road	Seasonal - 4/1/2016 - 10/31/2016	Chelsea	42512-00020	66	\$18.03	\$198	\$0	\$198	\$1,190	\$0	\$1,190	April 2016 - October 2016 revenue shown. Rental Period = 7 months.
8	125 Penfield Road	7/1/2005 - 12/31/2022	Fairfield Counseling Services	42512-00016	3,158	N/A	\$0	\$0	\$0	\$1	\$0	\$1	
9	370 Beach Road	7/25/2005 - 7/25/2104	Fairfield Historical Society	42512-00016	12,117	N/A	\$0	\$0	\$0	\$1	\$0	\$1	
10	210 Old Dam Road	Winter Lease - 11/29/2012 - 5/15/2033	Fairfield Indoor Tennis	01007-42475	32,749	\$1.93	\$9,006	\$0	\$9,006	\$63,045	\$0	\$63,045	September 12, 2016 - April 2017 revenue shown. Rental Period = 7.5 months. Office = 2,989 sq. ft., Courts = 29,760 sq. ft.
11	210 Old Dam Road	Summer Lease - 5/1/2015 - 9/15/2018	Fairfield Indoor Tennis	01007-42475	32,749	\$0.85	\$5,600	\$0	\$5,600	\$28,000	\$0	\$28,000	May 2016 - September 11, 2016 revenue shown. Rental Period = 4.5 months. Office = 2,989 sq. ft., Courts = 29,760 sq. ft.
12	611 Old Post Road	7/1/2013 - 6/30/2016 (Lease in Negotiation)	Fairfield Municipal Credit Union	42512-00022	1,250	\$18.82	\$1,960	\$0	\$1,960	\$23,520	\$0	\$23,520	
13	70 Sanford Street	7/1/2003 - 6/30/2033	Fairfield Theatre Company	42512-00015	20,504	\$3.95	\$6,745	\$0	\$6,745	\$80,942	\$0	\$80,942	FY16 revenue shown. \$2 Per Ticket Sold.
14	388 Hoyden's Hill Road	Month to Month	Golf Superintendent Cottage	42512-00016	1,346	\$10.70	\$1,200	\$0	\$1,200	\$14,400	\$0	\$14,400	
15	3763 Congress Street	1/1/2017 - 12/31/2019	Greenfield Farms	42512-00016	10 Acre Farmland	N/A	\$0	\$0	\$0	\$1	\$0	\$1	
16	1838 Black Rock Turnpike	1/26/1990 - 1/25/2030	Grella Family Invest. Partnership	42512-00016	2.57 Acre Parking Lot	N/A	\$0	\$0	\$0	\$1	\$0	\$1	

17	2425 Morehouse Highway	Seasonal - 1/1/2017 - 12/31/2017	H. Smith Richardson Concession	01007-42477	3,304	\$10.74	\$2,958	\$0	\$2,958	\$35,500	\$0	\$35,500	
18	880 South Benson Road	Seasonal - 5/30/2016 - 9/5/2016	Jennings Beach Concession	01005-42474	Refreshment Stand	N/A	\$7,593	\$133	\$7,727	\$22,780	\$400	\$23,180	2016 Season Rent Shown. Rental Period = 3 months.
19	Morehouse Highway	Seasonal - 5/30/2016 - 9/5/2016	Lake Mohegan Concession	01005-42474	Refreshment Stand	N/A	\$542	\$67	\$609	\$1,627	\$200	\$1,827	2016 Season Rent Shown. Rental Period = 3 months.
20	Patio at 1418 Post Road	5/1/2016 - 4/30/2018	Old Post Tavern	42512-00019	560	\$23.21	\$1,083	\$0	\$1,083	\$13,000	\$0	\$13,000	
21	3965 Congress Street	3/3/2014 - 3/2/2029	Omnipoint/T-Mobile Comm.	42514-00026	Cell Tower	N/A	\$3,495	\$0	\$3,495	\$41,944	\$0	\$41,944	
22	100 Reef Road	11/30/2008 - 11/30/2033	Omnipoint/T-Mobile Comm.	42514-00030	Cell Tower	N/A	\$3,011	\$1	\$3,012	\$36,129	\$0	\$36,129	
23	50 Nichols Street	5/15/2007 - 5/14/2017	Operation Hope	42512-00016	8,000	N/A	\$0	\$0	\$0	\$1	\$0	\$1	
24	Fairfield Train Station	6/1/2009 - 6/1/2018	Parking Authority	01090-49302	Commuter Parking Lot	N/A	\$26,250	\$0	\$26,250	\$315,000	\$0	\$315,000	
25	Mill Plain Road Lot	11/1/2016 - 11/30/2017	Parking Authority	01001-42515	Commuter Parking Lot	N/A	\$4,000	\$0	\$4,000	\$48,000	\$0	\$48,000	
26	240 Colony Street	9/1/2015 - 8/31/2018	Pilot House	42512-00016	6,100	N/A	\$0	\$0	\$0	\$1	\$0	\$1	
27	725 Old Post Road	5/23/2003 - 5/22/2102	Saint Paul's Nursery School	42512-00016	Playground Area	N/A	\$42	\$0	\$42	\$500	\$0	\$500	
28	555 Turney Road	Seasonal - 4/1/2016 - 11/30/2016	South Benson Marina Concession	01005-42474	Fuel Dock & Refresh. Stand	N/A	\$581	\$14	\$595	\$4,065	\$100	\$4,165	2016 Season Rent Shown. Rental Period = 7 months.
29	100 Mona Terrace	Month to Month	Southwest Connecticut EMS	42512-00021	486	\$10.89	\$441	\$0	\$441	\$5,292	\$0	\$5,292	
30	2963 Bronson Road	7/30/2002 - 7/30/2032	Sprint	42514-00025	Cell Tower	N/A	\$1,509	\$0	\$1,509	\$18,107	\$0	\$18,107	
31	3965 Congress Street	5/1/2013 - 4/30/2038	Sprint	42514-00025	Cell Tower	N/A	\$4,554	\$0	\$4,554	\$54,653	\$0	\$54,653	
32	3965 Congress Street	2/1/2006 - 1/31/2021	Verizon Wireless	42514-00029	Cell Tower	N/A	\$2,852	\$0	\$2,852	\$34,218	\$0	\$34,218	
Total All leases							\$126,394	\$615	\$127,009	\$972,804	\$5,500	\$978,304	

## **BLIGHT REPORT**

**2016**

**The 2016 year started with 17 blight complaints. A total of 49 blight complaints were processed in 2016. 39 complaints have been closed out. 10 remain on the blight/condemnation agenda.**

### **Remaining Blighted properties:**

**185 Thorpe St., 1180 Oldfield Rd., 92 Grasmere Ave., 66/68 Campfield Dr., 280 Tuckahoe La., 395 Ruane St., 476 South Benson Rd., 447 Stratfield Rd., 6 Rugby Rd., 32 Bronson Rd.**

### **Properties Resolved:**

**4185 Black Rock Turn., 73 Weeping Willow La., 69 Webster Rd., 355 Kings Highway., 741 Old Stratfield Rd., 41 Four Seasons Rd., 152 Brooklawn Terr., 161 Lota Dr., 63 Hill farm Rd., 131 Hunyadi Ave., 43 Garden Dr., 27 Bloomfield Dr., 648 Wilson Rd., 1649 Fairfield Beach Rd., 1326 Stratfield Rd., 78 Adelaide St., 119 Old Dam Rd., 222 Samp Mortar Dr., 5/7 Knapp's Park Dr., 290 Tahmore Dr., 346 Wakeman Rd., 499 Melville Ave., 78 Division St., 196 Candlewood Rd., 57 Beaumont., 333 Grasmere Ave., 717 Bronson Rd., 207 Green Brier., 431 Knapp's Highway., 11 Twin Brook La., 21 Elizabeth ., 6 Rugby Rd., 225 South Pine Creek., 165 Lounsbury Rd., 52 Beaumont Pl., 58 Garden Dr., 410 North Cedar Rd., 118 Edgewood Pl., 66/68 Campfield Dr.**

**Thomas Conley**

**Blight Prevention Officer**

Employees Retirement Board

Seat	Name	Position	Party	Term Start	Term End
1	Mahoney, John B		U	11/12	11/17
2	[VACANT]		*	11/13	11/18
3	Mullen, Geoffrey		R	11/14	11/19
4	Vahey, Brian P		R	11/15	11/20
5	Pollack, Scott H		U	11/11	11/16
EMP1	Kiraly, Susan				
EMP2	Rubano, Ken			03/15	03/17
EMPB OE	Bennett, Lisa				
FSEL	Tetreau, Michael C			11/15	11/19

Full Party Count	
N/A	4
Vacant	1
Republicans	2
Unaffiliated	2
Total Full	9

The Employees Retirement Board, which is comprised of the First Selectman, two town employees, a Board of Education employee and five volunteer residents, is responsible for the general management and direction of the pension fund for town employees and ensuring the effective operation of the retirement system.

RECEIVED



# Town of Fairfield

Office of the First Selectman  
Fairfield, Connecticut 06834

## BOARDS AND COMMISSIONS QUESTIONNAIRE

To be considered for appointment to a Board or Commission please fill out this form, save a copy, and send a copy, along with a copy of your resume, to the First Selectman's office at firstselectman@town.fairfield.ct.us. Please note that your resume and completed questionnaire are public documents. If you have any questions please contact Kathleen Griffin at 203-256-3030 or kgriffin@town.fairfield.ct.us.

Board/Commission: Employees Retirement Board  
Date: 11/18/17

Name: Carolyn Trabucco  
Address: 241 Sherman Farm Rd  
Fairfield, CT 06834

Email: CT.Trabucco@gmail.com  
Home Phone: 203-331-7192

Work Phone: 203-331-7192  
Cell Phone: 203-331-7192

1. How did you learn about this position?

Brian Vehey

2. Why are you interested in serving and how can you contribute to this board / commission?

I have been interested in serving Fairfield for some time. The Employees Retirement Board is where I can contribute my professional knowledge and career experiences with my care for managing our town well. I am independent minded, highly inquisitive and clear thinking. I am also financially literate and knowledgeable in investment products and processes. My background includes serving on a corporate board, working as an equity research analyst and commodity analyst and in sustainability/ESG finance.

3. Have you attended any meetings or reviewed past minutes / agendas? If yes, please specify.

I have reviewed all of the minutes posted on the town's website

4. Have you spoken with the chair, any members, or the appropriate Department Head?

Brian Vehey and I spoken about the board and its role.

5. Have you read the written description of the board's role?

Yes

6. Do you have any potential conflict of interest?

No

7. Do you know the time, date and location of meetings and will you be able to attend and fulfill the obligations of the position?

Yes

8. Participation requires that you are registered voter in the town of Fairfield. Additionally, the town charter requires that party balance be maintained on all boards/commissions. Are you registered to vote and what is your party affiliation?

yes - Democrat

9. Use this space to ask any questions you may have or to provide additional information you'd like to share.

RECEIVED

By Office of the First Salesperson at Westport, CT

## CAROLYN TRABUCO

221 Sherwood Farm Road, Fairfield, CT 06824

CLTrabuco4@gmail.com • 203-331-7879 • [www.linkedin.com/in/carolyntrabuco](http://www.linkedin.com/in/carolyntrabuco)

### PROFESSIONAL PROFILE

Combining financial, analytical and communication leadership skills to enable high-impact decision making

**Business, Financial, Thematic Analyst** with expertise developing business and industry models, identifying pre-financial risks, valuing companies, defining growth vs. risk, and cultivating C-level relationships.

- Analyzed companies/industries in oil, energy, mining, aviation, telecom, consumer products, technology, and internet – with experience on the buy side, sell side, hedge fund side, and commodity funds side.
- Apply deep knowledge and practical skills toward creating and understanding innovative long term management compensation incentive and retention structures at leading Brazilian commercial airline and how to execute through volatile economic conditions.
- Create and communicate analytical framework to assess risk of material social, workplace, governance or environmental (ESG) issues or events for use as predictive performance indicators.

### LEADERSHIP SKILLS & EXPERTISE

Strategic Planning & Execution | Business & Financial Modeling | Corporate Development and Partnerships  
Industry Analysis | Valuation | Sustainability Metrics | C-Level, Investor Relationships

### CAREER HISTORY

CORNERSTONE CAPITAL GROUP, New York, NY

2016-present

**MANAGING DIRECTOR, GLOBAL THEMATIC ANALYST**

Senior contributor to start-up financial services firm that seeks to apply the principles of sustainable finance across the capital markets, enhancing investment processes through transparency and collaboration.

- Researching and publishing new research in the emerging field of Environmental, Social and Governance (ESG) analysis for use alongside traditional financial analysis focused on identifying emerging areas of risk up to a year before they become financially material to a sector or a company.
- Applying the principles of sustainable finance across sectors, industries and companies particularly in areas of local and global stakeholder engagement, management compensation and incentives that align with corporate, community and customer values.
- Consult directly with companies who look to improve their ESG/Sustainability corporate culture or strategy.

AZUL BRAZILIAN AIRLINES, Brazil and CT

2007–Present

**BOARD OF DIRECTORS / INDEPENDENT MEMBER / COMPENSATION COMMITTEE CHAIRPERSON**

Sit on board of Brazilian airline startup co-founded with David Neeleman of JetBlue. Evaluate growth strategy, participate in marketing plans, discuss competitive responses, negotiate senior management compensation packages, created LTI plan for top 40 executives and review strategies for working with Brazilian government.

- Screened VCs and built book of high-quality investors, raising 60% of startup capital (largest raise in aviation history).
- Grew airline to 200+ destinations/140+ aircraft/10,000 employees/33% domestic market share in first 6 years.

ADAMS HILL PARTNERS, Westport, CT

Aug-November 2014

**RESEARCH ANALYST**

Idea generator in an Equity Long/Short hedge fund which primarily focused on global industrials and resources, responsible for equity analysis in oil, natural gas and services sectors through fund closure in December 2014.

PHIBRO TRADING / ASTENBECK CAPITAL MARKETS, Westport, CT

2009–2014

**SENIOR VICE PRESIDENT & RESEARCH ANALYST**

Served as 1 of 4 senior analyst advisers in an oil/commodity hedge fund, with responsibility for equity investments and oil analysis. Operated under well-known oil trader and fund manager, Andy Hall, to recommend buy and sell ideas on integrated oil, E&Ps, and global oil service equities. Maintained a global oil supply-and-demand model.

- Conducted highly technical analysis that identified the pattern within monthly oil production data for the Bakken ND play (location), suggesting the production growth rate would plateau in 2014.
- Created the analytical framework and template used to monitor and analyze oil leases and wells, forecasting production potential of major shale oil plays in TX – such as the Eagle Ford and Permian Basins.

PEQUOT CAPITAL MANAGEMENT, Westport, CT

2002–2009

**SENIOR VICE PRESIDENT, SENIOR ANALYST**

Led team in analyzing global resources and emerging markets for CORE Global Fund, reporting to CEO, Art Samberg. Conducted financial modeling, valuation analysis, and C-level interviews at companies under consideration for investment. Determined supply and demand industry framework and presented findings to investment team.

- Identified secular demand change for global materials in 2003 and generated multi-year returns by recommending top-fund-performing equities such as Nucor and CVRD (Vale).
- Directed team that prepared CEO for participation in Barron's Roundtable – providing ideas, valuation, company models, and research about industry sectors and ideas he would pitch.
- Co-managed Cosmos Fund, emerging markets focused equity long/short hedge fund.

FIRST UNION CAPITAL MARKETS, New York, NY

1998–2000

**SENIOR EQUITY RESEARCH ANALYST, WIRELESS / SENIOR EQUITY RESEARCH ANALYST, INTERNET**

Recruited to focus on the wireless communications sectors. Moved into position that focused and published on the burgeoning Internet sector – leading team of 2 with concentration on Internet Content B2C segment (YHOO).

MONTGOMERY SECURITIES, New York, NY/San Francisco, CA

1996–1998

**EQUITY RESEARCH ANALYST, HEALTHCARE INFORMATION TECHNOLOGY & WIRELESS COMMUNICATIONS**

Hired to apply healthcare technology expertise and rapport within this growth oriented sell-side company. Took on tough challenge of finding good companies in wireless sector after telecom act transformed the industry.

LEHMAN BROTHERS, New York, NY

1995–1996

**EQUITY RESEARCH ANALYST, HEALTHCARE INFORMATION TECHNOLOGY**

Transitioned to Lehman as the youngest senior analyst hired to date. Quickly learned new sector of healthcare information technology and implemented style of being analytical in a natural way.

FIDELITY INVESTMENTS/FMR RESEARCH, Boston, MA

1991–1995

**EQUITY RESEARCH ASSOCIATE / 401k CUSTOMER SERVICE REPRESENTATIVE**

Hired for customer service and saw need for enhanced communications among reps. Developed plan and gained approval for newsletter, interviewing portfolio managers and forming relationships that led to equity research associate position within the equity research group of FMR covering IPOs, Consumer Durables, Specialty Food and Cruise Lines.

**EDUCATION**

GEORGETOWN UNIVERSITY 1991 – Bachelor of Arts, Art History Major, International Relations Minor

Yale School of Management Executive Education 2016 – Corporate Sustainability Accelerator

Phillips Academy, Andover MA, 1987



### NOT-FOR-PROFIT VOLUNTEER HISTORY

**WORLD FUND, NEW YORK, NY – TRUSTEE EMERITUS** 2005-2010

**BOARD OF TRUSTEES / VICE CHAIR / NOMINATING COMMITTEE CHAIRPERSON**

Worldfund is the premier U.S. non-profit dedicated exclusively to improving basic K-12 education in Latin America.

- Actively participated in strategic planning, business development and analysis; trustee recruiting and fundraising execution.
- Led the strategy repositioning team at Worldfund to focus on scalable superintendent and teacher quality improvement initiatives, creating action plan that expanded outreach from 5K to 1M students – becoming a teacher/student training facilitator and STEM curriculum implementer across Latin America.
- Researched, identified and recruited key corporate partners for STEM curriculum funding and roll-out in Brazil.
- Speaking engagements including Brazilian-American Chamber of Commerce Annual Conference – On behalf of Worldfund – “Infrastructure of Brazil”.
- Created pathway to incremental fundraising via fun and playful Text to Pledge segment at Annual Gala.

**EARTHPLACE, WESTPORT, CT – HONORARY TRUSTEE**

2008-2012

**BOARD OF TRUSTEES / PRESIDENT**

Founded in 1958 in Westport, CT Earthplace maintains a 62-acre nature sanctuary, exhibits an interactive natural history museum, houses live wildlife for public viewing and hosts many public nature programs and events. The center's activities include a state-licensed preschool and summer camp, and the Harbor Watch water quality testing program.

- Created and led a strategic planning committee which focused on ways to reduce spending, improve market awareness and generate additional revenue.
- Formed and empowered a facilities and building committee to identify, scope out, recommend and implement overdue facility upgrades. Upgraded preschool playground, refurbished auditorium, replaced the roof and added solar panels; replaced all windows and carpeting; improved animal enclosures, and renovated classroom spaces.
- Restructured the staffing model to eliminate duplication, streamlined work flow models to increase efficiency, upgraded mailing, accounting, financial and fundraising software analytical tools to better track activities and focused fundraising initiatives.
- Transitioned the board to enable it to attract a new Executive Director in 2013 following the retirement of the long standing Executive Director in 2012.

### PERSONAL INTERESTS AND ACTIVITIES

Frequent Contributor, Fairfielders Against Cutting Education Spending (FACES), Fairfield, CT

SASO, Fairfield CT ~ Fairfield Public Schools PTA Budget Rep 2007-present

Sea Turtle Conservation in Bahia | Chasing our two boys down Trestle at Mary Jane | Caravaggio Hunting

Historic District Commission

Seat	Name	Position	Party	Term Start	Term End
1	Dailey, Thomas A		D	11/12	11/17
2	Smith, Timothy H		U	11/13	11/18
3	Klyver, Adam J		R	11/14	11/19
4	Kufferman, Margaret Browning		U	11/10	11/15
5	Gould, Ellen	Chairman	U	11/11	11/16
ALT1	Kaylor, Phoebe S		U	11/13	11/18
ALT2	Shea, Christopher		R	11/14	11/19
ALT3	Morgan, John		R	11/11	11/16

Full		Alternate	
Party Count		Party Count	
Democrats	1	Republicans	2
Republicans	1	Unaffiliated	1
Unaffiliated	3	Total ALT	3
Total Full	5		

The Historic District Commission is an appointed board of eight volunteer residents who vote on alterations to properties that are within the town's three historic districts in Greenfield Hill, Southport and the Old Post Road near downtown Fairfield.

The Historic District Commission must approve any change to a property that is within a historic district if that change is visible from a public way, assuming natural barriers, such as shrubs and trees, are not in place, since they can be removed.

12/29/2016 12:18:21 PM

Christopher Shea  
917 Merwins Lane, Fairfield, CT 06824  
203-292-6034  
chris@DomusLLC.com

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- Summary
- Enthusiastic and experienced construction professional with a proven track-record of historically accurate construction practices and a willingness to participate and give back to my community.
  - Owner of award-winning construction company specializing in complex high end Fairfield County, Connecticut residential building projects
  - Demonstrated achiever with exceptional knowledge of construction business practices, and regulations.
  - Skilled at learning new concepts quickly, working well with others as a committee member, and communicating ideas clearly and effectively.
- 

Education

Bachelor of Science Degree  
Central Connecticut State College, New Britain, CT  
Construction Management Technology

1983

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Career History & Accomplishments

- Project Manager, Smith Thibault, Inc.
- Worked directly with Director of Construction of this large commercial interior construction company based in Hartford, CT. Responsible for numerous institutional, manufacturing, retail, restaurant and business interior build-outs

1984

**Project Manager, Industrial Construction Company, Inc.**

*1990*

- Responsible for overall project management and completion of the University Center on the Campus of The University of Hartford. Project included: Library Addition, Bookstore, Museum of American Political Life, Art Gallery, Conference Center with Food Service capabilities, Theater, Radio and Television Studios, Art School.
- Responsible for overall project management and completion of the Woodstock Academy Campus reconstruction. Work included a complete restoration of the Academy Building (a Historic building that served as the original school house campus building), Additions and renovations to the other two major buildings on campus while school was in session.
- Other smaller construction projects were also successfully completed during my tenure

**Owner, Domus Constructors, L.L.C.**

*1998 to  
present*

- Domus Constructors, L.L.C. is a small to mid-sized residential construction company founded in 1998. We specialize in high-end remodeling and additions and occasionally build some new homes. My goal when founding Domus was to provide a resource to the local community where clients can obtain the service of an honest, reliable and professional company to perform high quality residential construction services at a reasonable price.
- The business has received numerous awards and been recognized by various organizations for our work.
- Our annual sales volume is typically between 2 and 3 million dollars.

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**Memberships & Affiliations**

- Member, National Association of Home Builders
- Member, Connecticut Business and Industry Association
- Certified Green Builder, NAHB
- Energy Star Builder/Partner

TO: Board of Selectmen

FROM: Edward Boman  
Assistant Director of Public Works

Date: December 30, 2016

RE: Two Solar photovoltaic (PV) Power Purchase Agreements and two Lease Agreements at:

The Conservation Garage at 50 Richard White Way  
Public Works Garage at 357 Veres Street

**Background**----The State of Connecticut created a new program to carry out two goals: (1) decentralize the power grid and (2) increase the amount of green power available in the State. The program is called ZREC/LREC , which is short for Zero emission Renewable Energy Credits and Low emissions Renewable Energy Credits. The credits are created by the New England Power Pool General Information System (NEPOOL GIS). They are applied for by a developer and sold to United Illuminating as part of the program.

As Part of the program, UI is required to make or purchase 20% of its power from Class I green energy sources over the next 22 years. The ZREC/ LREC program provides 15 year financing to build private, non-utility Class I power plants. Examples of ZREC include solar PV, wind and Hydro; LREC is limited to fuel cells.

**1. Purpose and Justification**—The purpose of this request is to lower the cost Fairfield pays for electricity over the next twenty years without any capital or other cost. The justification for doing the program as a Power Purchase Agreement (PPA) is to minimize municipal risk. The private sector designs, finances, builds , owns, maintains and operates the facilities.

**2. Detailed Description of the Proposal** all of the solar arrays will be located on the roof of the buildings.

Name	Size	Annual production
• Conservation Garage	24.5kw	24,500kwh
• Public Works Garage	55.71kw	55,710kwh
Totals	80.21wh	80,210kwh

**3. Reliability of Estimated Cost**—There are no costs to the Town for these Power Purchase Agreements. CEFA's electric price to the Town is based on low bids awarded by UI for a guaranteed 15 year payout.

**4. Increased Productivity or Efficiency**- -Not Applicable

**5. Additional Long Range Costs**—None

**6. Additional Use or Demand on Existing Facilities**—None

**7. Alternatives To This Request**---The only alternative is to do nothing and lose the opportunity .

**8. Safety and Loss Control**---There should be no impact as the facilities are owned maintained and insured by the private owners with the Town named as coinsured.

**9. Environmental Cosiderations**—Are all positive. 100% of the Buildings electricity will come from renewable resources with zero emissions

**10. Insurance**—NA

**11. Financing**—NA

**12. Other Considerations**—None

**13. Other Approvals**---RTM (Lease)

## SOLAR POWER PURCHASE AGREEMENT

This SOLAR POWER PURCHASE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2016 (the "Effective Date") by and between CEFIA Holdings LLC, a Connecticut limited liability company ("Seller"), and the Town of Fairfield, a municipal corporation organized and existing under the laws of the State of Connecticut ("Purchaser"). Each of Seller and Purchaser are sometimes referred to as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Purchaser conducts its municipal business at the Premises (defined below);

WHEREAS, the Premises are owned by Purchaser (in its capacity as owner of the Premises, "Owner");

WHEREAS, Owner and Seller are parties to that certain System Site Lease Agreement dated of even date herewith (the "Site Lease"), pursuant to which Owner has leased to Seller that certain portion of the Premises referred to herein as the Project Site (as defined in the Site Lease) and granted to Seller certain easements on, over, and across the Premises for the installation, maintenance, and operation of the System (defined below);

WHEREAS, Seller desires to install the System on the Project Site and sell the electricity generated from the System to Purchaser, on the terms set forth herein; and

WHEREAS, Purchaser desires to purchase from Seller the electricity generated from the System on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

### AGREEMENT

1. **DEFINITIONS.** Capitalized terms used herein shall have the respective meanings set forth in Exhibit A.

2. **PURCHASE AND SALE OF ENERGY.**

2.1 Sale of Energy. Seller shall sell to Purchaser and Purchaser shall purchase from Seller all of the Energy, as and when the same is produced, at the Energy Price in effect at the time of delivery. Seller shall deliver the Energy to the Delivery Point, and Purchaser shall accept the Energy delivered for the full Contract Term.

2.1.1 If Purchaser's electric requirements are less than the Energy produced by the System for any reason, Purchaser shall nevertheless pay for such Energy and, to the extent permitted by applicable law, deliver any excess Energy to Utility in accordance with the Net Metering Rules or sell or exchange the excess Energy to any other buyer. Purchaser recognizes

that Seller has an interest in maximizing the output of the System, and Seller shall not be required to curtail the output of the System at any time due to lack of demand on the part of Purchaser.

2.1.2 To the extent that Purchaser's electricity requirements exceed the Energy produced by the System, Purchaser shall purchase such excess electricity from Utility in accordance with the Net Metering Rules. Purchaser shall be responsible for all charges, applicable taxes, penalties, ratcheted demand or similar charges assessed by Utility for transmission and distribution service and other services necessary to meet the full energy requirements of Purchaser.

2.1.3 Purchaser shall be entitled to the entire Energy output of the System; provided, however, that Seller shall not be required to cause the System to produce a minimum amount of Energy, and Seller is not guaranteeing any particular quantity of Energy production from the System.

2.2 Contract Term. The term of this Agreement shall be for a period of twenty (20) years commencing on the Commercial Operation Date (the "Contract Term").

2.3 Environmental Attributes. Seller shall have all right, title, and interest in and to all Environmental Attributes related to the System. At Seller's expense, Purchaser agrees to cooperate with Seller in any applications for Environmental Attributes related to the System.

2.4 Environmental Incentives. Any Environmental Incentive related to the System shall be the sole property of Seller. Any Environmental Incentive related to the System that is initially credited or paid to Purchaser shall be assigned by Purchaser to Seller without delay. At Seller's expense, Purchaser agrees to cooperate with Seller in any applications for Environmental Incentives related to the System.

2.5 Impairment of Environmental Attributes and Incentives. Purchaser shall not take any action or suffer any omission that would have the effect of reducing the production or impairing the value to Seller of the Environmental Attributes and Environmental Incentives. Purchaser shall be solely responsible for notifying Seller of any action or omission that could impair such value and for consulting with Seller as necessary to prevent impairment of the value of Environmental Attributes and Environmental Incentives.

### 3. THE SYSTEM.

3.1 Installation, Operation, and Maintenance of the System. Seller shall be responsible for the installation, operation, and maintenance of the System in a manner consistent with Prudent Operating Practice. If the supply of Energy from the System is interrupted as a result of malfunction or other shutdown, Seller shall use commercially reasonable efforts to remedy such interruption. Seller shall comply with all applicable laws and regulations relating to the operation of the System and the generation and sale of Energy, including obtaining and maintaining in effect all relevant approvals and permits, other than permits that, by their nature, can only be obtained by Purchaser.

#### 3.2 Critical Milestones



3.2.1 Milestones. Seller shall achieve the following development milestones on or before the date(s) set forth in the subsections below:

- a. Receipt of all permit(s) necessary to construct the System, no later than [12/16/16];
- b. Commencement of actual construction activities on the Premises, no later than [12/19/16]; and
- c. Achievement of Commercial Operation Date no later than [2/3/17].

3.3 Conditions Precedent to Commencement of Construction and Installation.

Commencement by the Seller of construction and installation activities shall be subject to the satisfaction of the following conditions precedent:

3.3.1 Seller shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;

3.3.2 Seller shall have obtained the permits, licenses and other approvals required to be obtained by Seller prior to such commencement. Seller shall notify Purchaser in writing promptly if any permits, licenses or approvals are denied or if any third party has taken action that may hinder or delay the construction and installation of the System; and

3.3.3 Seller shall have received satisfactory notice that the applications for Environmental Incentives for the System at the Premises have been accepted and approved by the appropriate governing agency; provided, however, if any of the foregoing conditions precedent are not completed by [2/3/17], Seller or Purchaser shall have the option to terminate this Agreement without triggering the default provisions of this Agreement and without triggering any liability under this Agreement. Alternatively, in the event that such conditions precedents are not satisfied by such date, the Parties may mutually agree in writing to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

3.4 Maintenance of Health and Safety. Seller shall take all reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the System and shall comply with all applicable health and safety laws, rules, regulations, and permit requirements. If Seller becomes aware of any circumstances relating to the Premises or the System that creates an imminent risk of damage or injury to any Person or any Person's property (and, should Purchaser become aware of such circumstances, Purchaser shall promptly notify Seller with respect thereto), Seller shall take prompt action to prevent such damage or injury and shall promptly notify Purchaser. Such action may include disconnecting and removing all or a portion of the System, or suspending the supply of Energy to Purchaser.

3.5 Phone/Data Line. In order to allow Seller to provide Purchaser and third parties with access to real-time online data related to the measurement of System performance, Purchaser shall permit Seller reasonable access to Purchaser's broadband internet connection located at the Premises. If Purchaser does not maintain such internet connection on the

Premises, Purchaser shall reasonably cooperate with Seller to allow Provider to install and maintain a broadband internet connection at the Premises.

3.6 Assistance with Permits and Licenses. Upon Seller's request, Purchaser shall assist and cooperate with Seller, at Seller's cost, to acquire and maintain approvals, permits, and authorizations including but not limited to those permits and approvals listed in Exhibit F or to facilitate Seller's compliance with all applicable laws and regulations related to the construction, installation, operation, maintenance, and repair of the System, including providing any building owner or occupant authorizations, and signing any applications for permits, local utility grid interconnection applications, and rebate applications as are required by law to be signed by Purchaser. Purchaser shall also deliver to Seller copies of any necessary approvals, permits, rebates, or other financial incentives that are required by law in the name or physical control of Purchaser.

3.7 Commercial Operation Date. Seller shall deliver notice to Purchaser of the occurrence of the Commercial Operation Date, which shall be the earlier of [2/3/17] or the date on which all of the following shall have occurred: (a) Seller shall have certified to Purchaser that the System is substantially complete and capable of regular commercial operation in accordance with good practices and manufacturer guidelines for all material components and that all performance testing has been satisfactorily completed, (b) all permits and licenses required to be obtained in connection with the operation of the System shall have been obtained and be in full force and effect, and (c) Seller shall have entered into an Interconnection Agreement with the Utility and completed all interconnection requirements.

3.8 Early Termination. In the event that the Commercial Operation Date has not occurred by three hundred and sixty five (365) days from the Effective Date of this Agreement, Purchaser may terminate this Agreement upon thirty (30) days' written notice to Seller delivered at any time prior to the actual Commercial Operation Date; provided, however, that the foregoing date shall be extended on a day-for-day basis for up to three hundred and sixty five (365) days for any Force Majeure occurring after the Effective Date and prior to the Commercial Operation Date, or for any delay attributable to Purchaser, including, without limitation, actions by Purchaser which restrict Seller's access to the Premises.

3.9 Seller's Taxes. Subject to Section 3.10, Seller is solely responsible for all income, gross receipts, ad valorem, personal property, or other similar taxes and any and all franchise fees or similar fees relating to Seller's ownership of the System.

3.10 Purchaser's Taxes. Purchaser is responsible for paying all taxes, charges, levies, and assessments against the Premises. Purchaser is also responsible for paying all sales, use, and other taxes, and any and all franchise fees or similar fees assessed against Purchaser as a result of Purchaser's purchase of the Energy and, in the event that Purchaser exercises the Purchase Option, its purchase and ownership of the System, which fees are not otherwise the obligation of Seller.

3.11 Notice of Damage. Purchaser shall promptly notify Seller of any physical conditions or other circumstances of which Purchaser becomes aware that indicate there has been or might be damage to or loss of the use of the System or that could reasonably be expected to

adversely affect the System.

#### 4. PAYMENT AND METERING.

4.1 Consideration for Energy Delivered. As consideration for the delivery of Energy by Seller, Purchaser shall pay for Energy delivered hereunder at the applicable Energy Price.

4.2 Invoicing. Seller shall invoice Purchaser for Energy monthly. Seller shall deliver each invoice within ten (10) Business Days after the end of each monthly billing period. Each invoice shall be levelized and calculated based on the amount of Energy expected to be generated over the course of a year multiplied by the then-applicable Energy Price and divided by twelve (12). The amount due shall be prorated for any partial month during the Contract Term. Purchaser shall pay the amount due to Seller within fifteen (15) Business Days after receipt of each invoice. Notwithstanding the foregoing, in the event that Purchaser elects to renew this Agreement pursuant to Section 8.3, Purchaser shall pay the Renewal Rate for Energy provided during such renewal period.

4.3 True-Up. Annually, but no later than fifteen (15) Business Days after the end of each calendar year, Seller shall deliver to Purchaser a statement that shall set out the amount of Energy delivered in kWh during the past calendar year, the then-applicable Energy Price, and the total amount paid to Seller during that calendar year. Such statement shall include sufficient details so that Purchaser can reasonably confirm the accuracy of the statement including, among other details, beginning and ending meter readings. The statement shall describe the amount due from Purchaser to Seller for any overproduction of Energy versus that estimate used in the calculation of the levelized repayment schedule, as described in Section 4.2 above, or the amount due from Seller to Purchaser for any underproduction of Energy versus that estimate. Purchaser shall pay the amount due to Seller, or Seller shall pay the amount due to Purchaser, within fifteen (15) Business Days after receipt of each statement. If Purchaser does not pay Seller the amount due within fifteen (15) Business Days after receipt of each statement, such amount shall accrue interest at the Interest Rate from the date due to the date paid.

4.4 Shutdown Requested by Purchaser. Except as set forth in this Agreement, during the term of this Agreement, Purchaser shall not take any action, or refrain from taking any action required by this Agreement, with the purpose or effect of preventing Seller from operating the System to generate Energy, delivering the Energy to the delivery point, and obtaining the Environmental Incentives. Notwithstanding the foregoing, at the request of Purchaser by reasonable prior written notice, Seller shall curtail Energy deliveries if required by the Purchaser in the ordinary course of business in the use of the Premises (a "Maintenance Shutdown"), and Seller shall, if requested by Purchaser and at Purchaser's expense, move all or such part of the System as may be required to complete such maintenance or repairs. Purchaser will be allotted the annual number of kilowatt hours of curtailed generation capacity for Maintenance Shutdowns (the "Maintenance Shutdown Allotment") set forth in Exhibit G. Any unused Maintenance Shutdown Allotment shall roll over and accumulate for a maximum of the latest five (5) Contract Years on an ongoing basis. In the event that Purchaser requests or causes a Maintenance Shutdown that would reduce the generation of Energy by more than the Maintenance Shutdown Allotment, and such Maintenance Shutdown is not due to a breach by Seller or a Force Majeure Event,

Purchaser shall be responsible to Seller for the amount of Energy revenue, plus the value of the Environmental Incentives (in each case, calculated by Seller in a commercially reasonable manner) that are foregone as a result of a Maintenance Shutdown lasting longer than permitted by the Maintenance Shutdown Allotment. Seller and Purchaser shall reasonably cooperate to mitigate the damages suffered as a result of any excess maintenance shutdowns, including, if feasible, by a partial rather than complete shutdown of the system and/or the continued delivery of power to the local utility in order to generate Environmental Incentives. In no case shall Purchaser be required to pay damages in excess of the Purchase Price (as hereinafter defined), in each case as in effect at the commencement of such maintenance shutdown. Nothing in this Agreement shall prevent Purchaser or its first responders from shutting down the System in the event of an emergency, and Seller shall install and at all times maintain all emergency shutdown or disconnect equipment and signage as may be required by the Purchaser's local electric utility, or otherwise required as a condition of any of the required consents, approvals, permits, licenses and authorizations from relevant Governmental Authorities, utility personnel, and the Premises' owners.

4.5 Disputed Amounts. A Party may in good faith dispute the correctness of any statement (or any adjustment to any statement) under this Agreement at any time within six (6) months following the delivery of the statement (or statement adjustment). In the event that either Party disputes any statement or statement adjustment, such Party shall nonetheless pay the full amount of the applicable statement or statement adjustment (except any portions thereof that are reasonably believed to be inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as expressly provided otherwise elsewhere in this Agreement, and to give notice of the objection to the other Party. Any required payment will be made within fifteen (15) Business Days after resolution of the applicable dispute, together with interest accrued at the Interest Rate from the due date to the date paid.

4.6 Metering of Delivery. Seller shall measure the amount of Energy supplied to Purchaser at the Delivery Point using a commercially available, revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. Purchaser shall cooperate with Seller to enable Seller to have reasonable access to the meter as needed to inspect, repair, and maintain such meter. At Seller's option, the meter may have standard industry telemetry and/or automated meter reading capabilities to allow Seller to read the meter remotely. If Seller elects to install telemetry allowing for remote reading, Purchaser shall allow for the installation of necessary communication lines and shall reasonably cooperate in providing access for such installation. The meter shall be kept under seal, such seal to be broken only when the meter is to be tested, adjusted, modified, or relocated. In the event that either Party breaks a seal, such Party shall notify the other Party as soon as practicable. All Meters shall be installed consistent with all requirements and good practices specified by the Utility and the regional transmission operator, ISO New England.

4.7 Meter Verification. Annually, or earlier if Seller has reason to believe there may be a meter malfunction, Seller shall test the meter and provide copies of such tests to Purchaser. The tests shall be conducted by a qualified independent third party. Seller shall notify Purchaser seven (7) days in advance of each such test, and shall permit Purchaser to be present during such tests. If a meter is inaccurate, Seller shall promptly cause the meter to be repaired or replaced. If

a meter is inaccurate by more than two percent (2%) and the duration of such inaccuracy is known, then prior statements shall be adjusted accordingly. If a meter is inaccurate by more than two percent (2%) and it is not known when the meter inaccuracy commenced, then prior statements shall be adjusted for the amount of the inaccuracy on the basis that the inaccuracy persisted during one-half of the period since the prior meter test.

Once per calendar year and after reasonable written notice, Purchaser shall have the right to audit all such meter data and witness testing of the meters and the System's output at a mutually agreed to date and time, and any such audit shall be at Purchaser's sole cost and expense. Purchaser shall have a right of access to all meters at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.8 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all statements under this Agreement, for a period of at least two (2) years, and Seller shall grant Purchaser reasonable access to those books, records, and data at the principal place of business of Seller. Purchaser may examine such books and records relating to transactions under, and administration of, this Agreement, at any time during the period the records are required to be maintained, upon request with reasonable notice and during normal business hours.

4.9 Change in Law. The Parties acknowledge and agree that the Energy Price is based on assumptions related to the availability to the Provider of the Environmental Incentives. In the event of the elimination or alteration of one of more Environmental Incentives or any other change in law that results in a material adverse economic impact on Seller in respect to this Agreement, the Parties shall work in good faith to amend this Agreement within thirty (30) Business Days after such elimination or alteration as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties. If the Parties fail to enter into such an amendment by the end of such thirty (30) Business Day period, Seller may, but shall not be required to, terminate this Agreement. Following such termination, neither Party shall bear any liability to the other Party, and Seller shall remove the System from the Premises within one hundred eighty (180) days of such termination.

## 5. **OPTION TO PURCHASE SYSTEM.**

5.1 Grant of Purchase Option. Seller hereby grants to Purchaser the right and option to purchase all of the Seller's right, title, and interest in and to the System on the terms set forth herein ("Purchase Option"). Purchaser may exercise the Purchase Option on the fifth (5th) anniversary of the Commercial Operation Date and on each successive anniversary of the Commercial Operation Date during the remainder of Contract Term, or simultaneously with the termination of this Agreement pursuant to Section 10.2 (collectively, the "Purchase Option Dates"), provided that no Purchaser Event of Default, or any event which with the passage of time will become a Purchaser Event of Default, has then occurred and is ongoing.

5.2 Determination of Purchase Price. Purchaser may, at any time within thirty (30) days following each Purchase Option Date, request a determination of the purchase price under the Purchase Option (the "Purchase Price"). The Parties shall attempt to determine the Purchase Price by mutual agreement. If the Parties have not agreed on the Purchase Price within thirty

(30) days after Purchaser's request for a Purchase Price determination, then the Purchase Price shall be the fair market value of the System, as determined by an independent appraiser retained by the Parties (the "Independent Appraiser"), provided that the Purchase Price shall in no event be less than the applicable amount set forth on Exhibit E. The Independent Appraiser shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the System, and who specifically has prior experience valuing solar energy generating facilities. The Independent Appraiser shall be reasonably acceptable to Seller. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or adviser to, either of the Parties or their respective affiliates. The fair market value assessment of the System shall consider, among other things, the income and savings associated with the System for the remaining portion of the Contract Term, and the System's past and projected performance. The Independent Appraiser shall make a determination of the Purchase Price within thirty (30) days of appointment (the "Price Determination"). Upon making the Price Determination, the Independent Appraiser shall provide a written notice thereof to both Seller and Purchaser, along with all supporting documentation detailing the method of calculation of the Purchase Price. Except in the event of fraud or manifest error, the Price Determination shall be a final and binding determination of the fair market value. If Purchaser wishes to exercise the Purchase Option following the Price Determination, it shall deliver an exercise notice to Seller within ten (10) days of receipt of the Price Determination (the "Exercise Period"). Any such exercise notice shall be irrevocable once delivered. If Purchaser does not exercise the Purchase Option during the Exercise Period, then the Price Determination shall be null and void, and Purchaser may not request a new determination of the Purchase Price until the next Purchase Option Date. Each Price Determination by an Independent Appraiser shall be at Purchaser's expense, provided that in the event Purchaser exercises the Purchase Option, the applicable Price Determination shall be at Seller's expense.

5.3 Terms and Date of System Purchase. The Parties shall consummate the sale of the System to Purchaser no later than forty-five (45) days following Purchaser's exercise of the Purchase Option. On the effective date of such sale (the "Transfer Date") (a) Seller shall surrender and transfer to Purchaser all of Seller's right, title, and interest in and to the System and shall retain all liabilities arising from or relating to the System that arose prior to the Transfer Date; (b) Purchaser shall pay the Purchase Price to Seller in readily available funds, and shall assume all liabilities arising from or relating to the System as of and after the Transfer Date; and (c) both the Seller and the Purchaser shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System in Purchaser, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third-party consents and approvals, and such similar documents as may be reasonably necessary to complete and conclude the sale of the System to Purchaser. The purchase and sale of the System shall be on an "as-is, where-is" basis, and Seller shall not be required to make any warranties or representations with regard to the System, but Seller shall, to the extent reasonably possible, transfer or assign to Purchaser all manufacturer and third-party warranties with respect to the System or any part thereof.

5.4 Interconnection Agreement. Notwithstanding Section 1.7 of any Interconnection Agreement signed between Seller, Purchaser, and Utility (the "Interconnection Agreement"), Seller will forego all of its rights and responsibilities under such Interconnection Agreement, or agree in writing to a termination thereof, should Purchaser elect to exercise the Purchase Option.

## **6. TITLE AND RISK OF LOSS.**

6.1 Title. Seller shall at all times retain title to and be the legal and beneficial owner of the System, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part or fixture of the Premises. Seller may file one or more precautionary financing statements in jurisdictions it deems appropriate with respect to the System in order to protect its rights in the System.

6.2 Risk of Loss. Seller shall bear the risk of loss for the System, except to the extent caused by the breach by Purchaser of its obligations under this Agreement, the Site Lease or the negligence or intentional misconduct of Purchaser or its invitees.

6.3 System Casualty. Upon the total damage, destruction, or loss of the System, or, in the reasonable opinion of Seller's insurance provider, the System is determined to have experienced a constructive total loss, Seller shall have the option, in its sole discretion, to repair or replace the System or terminate this Agreement. Seller shall notify Purchaser in writing of its election within thirty (30) days after the date of the damage to the System. Seller shall under all circumstances be entitled to all insurance proceeds with respect to the System. If Seller elects to repair or replace the System, Seller shall undertake such repair or replacement as quickly as practicable. If Seller elects to terminate this Agreement, the termination shall be effective immediately upon delivery of the notice under this Section 6.3.

## **7. FORCE MAJEURE.**

7.1 Force Majeure. To the extent either Party is prevented by an event of Force Majeure from performing its obligations under this Agreement, such Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments when due). The Party claiming Force Majeure shall use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-claiming Party shall not be required to perform its obligations to the claiming Party corresponding to the obligations of the claiming Party excused by Force Majeure during the pendency of the Force Majeure. Notwithstanding anything in this Section 7.1 to the contrary, no payment obligation of Purchaser under this Agreement for amounts due and owing for Energy already provided may be excused or delayed as the result of Force Majeure. In case a Force Majeure event continues for at least eighteen (18) months, then either Party may terminate this Agreement by written notice to the other.

7.2 Notice. In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable, notify the other Party in writing of the nature, cause, date of commencement thereof and the

anticipated extent of any delay or interruption in performance; provided, however, that a Party's failure to give timely notice shall not affect such Party's ability to assert Force Majeure unless the delay in giving notice prejudices the other Party.

## **8. ADDITIONAL COVENANTS.**

8.1 Liens. Purchaser 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 System or any portion thereof. If Purchaser breaches its obligations under this Section 8.1, it shall promptly notify Seller in writing, shall promptly cause any lien to be discharged and released of record without cost to Seller, and shall indemnify Seller against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred in discharging and releasing such lien.

8.2 Extension of Term. Upon prior written notice to Seller at least one-hundred eighty (180) days prior to the expiration of this Agreement, Purchaser shall have the option to renew the term of this Agreement for one (1) additional five (5) year period at the Renewal Rate escalated annually at a rate mutually agreed to by the parties.

8.3 Performance Assurance; Downgrade Event. If Seller at any time has reasonable grounds to believe that Purchaser's or Purchaser's Performance Assurance provider's creditworthiness or performance under this Agreement has or will become unsatisfactory, or if Purchaser or Purchaser's Performance Assurance provider experiences a Downgrade Event, then Seller may by written notice require Purchaser to provide Performance Assurance within three (3) Business Days. Purchaser shall obtain and maintain such Performance Assurance, unless otherwise agreed upon by Seller in writing.

## **9. REPRESENTATIONS AND WARRANTIES.**

9.1 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller that:

9.1.1 Purchaser has the requisite corporate, partnership or limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Purchaser;

9.1.2 This Agreement constitutes Purchaser's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;



9.1.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Purchaser that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Purchaser to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Purchaser;

9.1.4 The audited financial statements of Purchaser dated the past two fiscal years, and the related audited statements of income shareholders' equity and cash flows for the fiscal years ended on such dates and the unaudited interim financial statements of Purchaser (i) were prepared in accordance with generally accepted accounting principles consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein; and (ii) present fairly the financial condition of Purchaser as of the dates thereof and results of its operations for the periods covered thereby. Purchaser further represents and warrants to Seller that since the date of the most recent of the above-referenced audited financial statements, there has been no material adverse change in Purchaser's financial condition, business, operations or prospects; and

9.1.5 Notwithstanding Section 3.1.2 of the Interconnection Agreement, the Purchaser shall not terminate such Interconnection Agreement without prior written approval from Seller.

9.2 Representations and Warranties of Seller. Seller represents and warrants to Purchaser that:

9.2.1 Seller has the requisite corporate, partnership or limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Seller;

9.2.2 This Agreement constitutes Seller's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

9.2.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Seller that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Seller to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Seller;

9.2.4 Neither the System nor any of Seller's services provided to Purchaser pursuant to this Agreement infringe on any third party's intellectual property or other proprietary rights; and

9.2.5 Notwithstanding Section 3.1.2 of the Interconnection Agreement, the Seller shall not terminate such Interconnection Agreement without prior written approval from Purchaser.

## **10. DEFAULTS/REMEDIES.**

10.1 Seller Event of Default. Each of the following events shall constitute a "Seller Event of Default":

10.1.1 Seller fails to pay to Purchaser any amount when due under this Agreement and such breach remains uncured for fifteen (15) Business Days following notice of such breach to Seller;

10.1.2 (i) Seller commences a voluntary case under any bankruptcy law; (ii) Seller fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Seller in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Seller remains undismissed or undischarged for a period of sixty (60) days; and

10.1.3 Seller breaches any other material term of this Agreement and (i) if such breach is capable of being cured within thirty (30) days after Purchaser's notice of such breach, Seller has failed to cure the breach within such thirty (30) day period, or (ii) if Seller has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Seller has failed to cure the breach within a further one hundred fifty (150) day period (such aggregate period not to exceed one hundred eighty (180) days from the date of Purchaser's notice).

10.2 Purchaser's Remedies. If a Seller Event of Default has occurred and is continuing, Purchaser may terminate this Agreement by written notice to Seller following the expiration of the applicable cure period, and may exercise any other remedy it may have at law or equity, including, in the event such Seller Event of Default occurs and is continuing after the fifth (5th) anniversary of the Commercial Operation Date, exercising the Purchase Option. If the Purchaser does not exercise the Purchase Option pursuant to a Seller Event of Default, the Seller must remove the System from the Premises with sixty (60) days and restore the Premises to its condition prior to installation excluding normal wear and tear.

10.3 Purchaser Event of Default. Each of the following events shall constitute a "Purchaser Event of Default":

10.3.1 Purchaser fails to pay to Seller any amount when due under this Agreement and such breach remains uncured for fifteen (15) Business Days following notice of such breach to Purchaser;

10.3.2 (i) Purchaser commences a voluntary case under any bankruptcy law; (ii) Purchaser fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Purchaser in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Purchaser remains undismissed or undischarged for a period of sixty (60) days;

10.3.3 Owner breaches any of its obligations under the Site Lease;

10.3.4 Purchaser ceases to conduct business at the Premises;

10.3.5 Purchaser (i) refuses to execute any document required for Seller to obtain any Environmental Attributes or Environmental Incentives related to the System, or (ii) causes any material change to the condition of the Premises that has a material adverse effect on the System; and

10.3.6 Purchaser breaches any other material term of this Agreement and such breach remains uncured for thirty (30) days following notice of such breach to Purchaser.

10.4 Seller's Remedies. If a Purchaser Event of Default has occurred and is continuing, Seller may terminate this Agreement by written notice to Purchaser following the expiration of the applicable cure period. Seller may also exercise any other remedy it may have at law or equity, including recovering from Purchaser all resulting damages, which damages shall include, but not be limited to, projected payments for Energy generated for the remainder of the Contract Term; the cost of removing the System from the Premises; any loss or damage to Seller due to lost or recaptured Environmental Attributes or Environmental Incentives, including, without limitation, lost revenue from the sale of Environmental Attributes to third parties (including any damages due to the early termination of any agreement for such sale), and the recapture of the investment tax credit under Section 48 of the Internal Revenue Code, the grant in lieu of tax credits pursuant to Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, and accelerated depreciation for the System; and all other amounts of any nature due under this Agreement (collectively, the "PPA Damages"). Pending Purchaser's payment of the PPA Damages, Seller may remain on the Premises and sell Energy and Environmental Attributes produced by the System to any third party.

10.5 Effect of Termination of Agreement. Upon the termination of this Agreement, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Purchaser and Seller under this Agreement shall be terminated. Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

10.6 Waiver of Consequential Damages. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PPA DAMAGES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

10.7 Limitation of Liability.

10.7.1 SELLER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED FORTY-FIVE THOUSAND DOLLARS (\$45,000).

10.7.2 PURCHASER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED NINETY-FIVE THOUSAND DOLLARS (\$95,000).

11. **FINANCING ACCOMMODATIONS.**

11.1 Purchaser Acknowledgment. Purchaser acknowledges that Seller may finance the System and that Seller's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a security interest in the System. In order to facilitate such financing, and with respect to any financing Seller of which Seller has notified Purchaser in writing (each, a "Financing Party"), Purchaser agrees as follows:

11.1.1 Consent to Collateral Assignment. Seller shall have the right to assign this Agreement as collateral for financing or refinancing of the System, and Purchaser hereby consents to the collateral assignment by Seller to any Financing Party of Seller's right, title, and interest in and to this Agreement.

11.1.2 Financing Party's Rights Following Default. Notwithstanding any contrary term of this Agreement:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty, or obligation required of Seller hereunder or cause to be cured any default or event of default of Seller in the time and manner provided by the terms of this Agreement. Nothing herein requires Financing Party to cure any default of Seller (unless Financing Party has succeeded to Seller's interests) to perform any act, duty, or obligation of Seller, but Purchaser hereby gives Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Seller to Financing Party, Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a Seller Event of Default.

(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Purchaser shall enter into a new power purchase agreement with Financing Party or its assignee on substantially the same terms as this Agreement.

**11.1.3 Financing Party Cure Rights.** Purchaser shall not exercise any right to terminate or suspend this Agreement unless Purchaser has given prior written notice to each Financing Party of which Purchaser has notice. Purchaser's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party shall have the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition; provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Purchaser's and Seller's obligations under this Agreement shall otherwise remain in effect, and Purchaser and Seller shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

**11.1.4 Continuation Following Cure.** If Financing Party or its assignee acquires title to or control of Seller's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 11.1.3, then this Agreement shall continue in full force and effect.

**11.2 Notice of Defaults and Events of Default.** Purchaser agrees to deliver to each Financing Party a copy of all notices that Purchaser delivers to Seller pursuant to this Agreement.

**12. NOTICES.** Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Seller: CEFIA Holdings LLC  
845 Brook Street  
Rocky Hill, CT 06067  
Attention: General Counsel

To Purchaser: Town of Fairfield  
Sullivan Independence Hall, Second Floor  
725 Old Post Road  
Fairfield, CT 06824  
Attention: First Selectman

**13. GOVERNING LAW; VENUE.**

**13.1 Choice of Law.** This Agreement shall be construed in accordance with the laws of the State of Connecticut, without regard to its conflict of laws principles.

13.2 VENUE. PURCHASER AND SELLER EACH HEREBY IRREVOCABLY SUBMITS IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN HARTFORD COUNTY, CONNECTICUT AND WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION THAT IT MAY HAVE UNDER THE LAWS OF THE UNITED STATES OR OF ANY STATE. PURCHASER AND SELLER EACH WAIVE ANY OBJECTION THAT IT MAY HAVE (INCLUDING, WITHOUT LIMITATION, ANY OBJECTION OF THE LAYING OF VENUE OR BASED ON FORUM NON CONVENIENS) TO THE LOCATION OF THE COURT IN WHICH ANY PROCEEDING IS COMMENCED.

#### 14. INDEMNIFICATION.

14.1 Seller's Indemnity to Purchaser. Seller shall indemnify, defend, and hold harmless Purchaser (including Purchaser's permitted successors and assigns) and Purchaser's subsidiaries, directors, officers, members, shareholders, and employees (collectively, "Purchaser Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Purchaser Indemnified Parties arising from or relating to (i) Seller's breach of this Agreement, or (ii) Seller's negligence or willful misconduct. Seller's indemnification obligations under this Section 14.1 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Purchaser Indemnified Party.

14.2 Purchaser's Indemnity to Seller. Purchaser shall indemnify, defend, and hold harmless Seller (including Seller's permitted successors and assigns) and Seller's subsidiaries, directors, officers, members, shareholders, and employees (collectively, "Seller Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Seller Indemnified Parties arising from or relating to (i) Purchaser's breach of this Agreement, or (ii) Purchaser's negligence or willful misconduct. Purchaser's indemnification obligations under this Section 14.2 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Seller Indemnified Party.

#### 15. INSURANCE.

15.1 Insurance Required. Each Party shall maintain in full force and effect throughout the Contract Term insurance coverage in the amounts and types set forth on Exhibit C. Each policy of insurance maintained by Purchaser shall (a) name Seller as loss payee (to the extent covering risk of loss or damage to the Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to Seller. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

15.2 Waiver of Subrogation. Each policy of insurance required hereunder shall provide for a waiver of subrogation rights against the other Party, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy.

15.3 No Waiver of Obligations. The provisions of this Agreement shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

## 16. **CONFIDENTIAL INFORMATION.**

16.1 Confidentiality. Neither Party (the “Receiving Party”) shall use for any purpose other than performing its obligations under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any confidential information of the Disclosing Party. Confidential information includes, without limitation, this Agreement and exhibits hereto; all information or materials prepared in connection with the System; drawings; specifications; techniques; models; data; documentation; Purchaser, supplier, or personnel names and other information related to Purchasers, suppliers, or personnel; pricing policies and financial information; and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed; (ii) as otherwise required by law; (iii) as advisable or required in connection with any government or regulatory filings, including, without limitation, filings with any regulating authorities covering the relevant financial markets; (iv) to its attorneys, accountants, financial advisors, or other agents, in each case bound by confidentiality obligations; (v) to banks, investors, and other financing sources and their advisors, in each case if any such Person has agreed to abide by the terms of this Section 16.1; (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by the same or similar confidentiality obligations; or (vii) to any Governmental Authority in connection with any Environmental Incentive. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16.2 Irreparable Injury; Remedies. Purchaser and Seller each agree that disclosing Confidential Information of the other Party in violation of the terms of this Article 16 may cause

irreparable harm, and that, notwithstanding Section 10.5, the harmed Party may immediately seek any and all remedies available to it at law or in equity, including, but not limited to, injunctive relief from a court of competent jurisdiction.

## **17. MISCELLANEOUS.**

17.1 Assignments. Neither Party shall have the right to assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Seller may assign any of its rights, duties, or obligations under this Agreement, without the consent of Purchaser, (i) to any of its affiliates, (ii) to any third party in connection with a financing transaction, or (iii) to any purchaser of the System.

17.2 Entire Agreement. This Agreement and the Site Lease represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

17.3 Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.

17.4 No Partnership or Joint Venture. Seller and Seller's agents, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Purchaser. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

17.5 Headings; Exhibits. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement. Any Exhibits referenced within and attached to this Agreement, including any attachments to the Exhibits, shall be a part of this Agreement and are incorporate by reference herein.

17.6 Remedies Cumulative; Attorneys' Fees. No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law 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. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

17.7 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. Any such waiver must be in a writing executed by the Party making such waiver.



17.8 Severability. If any part, term, or provisions of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement and shall not render this Agreement unenforceable as a whole. Instead, the part of the Agreement found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

17.9 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Seller to dedicate the System to public use or subject itself to regulation as a “public utility” (as such term may be defined under any applicable law).

17.10 Service Contract. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract for the sale to Purchaser of energy produced at an alternative energy facility.

17.11 Forward Contract. The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

17.12 Publicity. The Parties agree that each may, from time to time, issue press releases regarding the System, provided, however that neither Party shall issue a press release regarding the System without the prior consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Parties shall cooperate with each other in connection with the issuance of such press releases. Purchaser shall not make claims of using solar energy at the Premises. Purchaser may publicize that it is serving as a host for the System and display photographs of the System in its advertising and promotional materials, provided that such materials shall identify Seller as the owner and developer of the System and shall be consistent with Section 2.3.

17.13 Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (“.PDF”) signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

17.14 Further Assurances.

17.14.1 Additional Documents. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this section.

17.14.2 Certificates. From time to time, Purchaser shall provide within fifteen (15) Business Days after receipt of a written request from Seller (i) a lien waiver from any party purporting to have a lien, security interest, or other encumbrance on the Premises,

confirming that it has no interest in the System, or (ii) an estoppel certificate attesting, to the knowledge of Purchaser, of Seller's compliance with the terms of this Agreement or detailing any known issues of noncompliance, and making such other representations, warranties, and accommodations reasonably requested by the recipient of the estoppel certificate

17.14.3. Opinion. Upon the receipt of a written request from Seller, Purchaser shall deliver an opinion of counsel, in form and substance satisfactory to Seller, confirming (i) the enforceability of this Agreement and the Site Lease against Buyer, and (ii) the accuracy of the representations and warranties of Purchaser set forth in Section 9.1 of this Agreement and Section 6.1 of the Site Lease.

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the Parties have caused this Solar Power Purchase Agreement to be duly executed and delivered as of the Effective Date.

**SELLER**

CEFIA Holdings LLC

By: \_\_\_\_\_  
Name:  
Title:

**PURCHASER**

The Town of Fairfield

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT A**

### **DEFINITIONS**

**"Agreement"** has the meaning set forth in the Preamble.

**"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

**"Commercial Operation Date"** means the date when the System is "placed in service" for purposes of Section 48 of the Internal Revenue Code.

**"Confidential Information"** has the meaning set forth in Section 16.1.

**"Contract Term"** has the meaning set forth in Section 2.2.

**"Contract Year"** means the twelve (12) month period commencing on the Commercial Operation Date, and each consecutive twelve (12) month period thereafter during the Contract Term.

**"Delivery Point"** means the point of interconnection between the System and the Premises' internal electrical system.

**"Downgrade Event"** means Purchaser at any time (a) if rated by one of the following rating agencies, is rated less than (i) Baa3 by Moody's Investors Service, Inc. (or its successor), or (ii) BBB- by Standard and Poor's Rating Services, a division of McGraw-Hill (or its successor), or (iii) "investment grade" by any other nationally recognized rating agency, or (b) fails to maintain Performance Assurance.

**"Effective Date"** has the meaning set forth in the Preamble.

**"Energy"** means electrical energy that is generated by the System, expressed in kWh.

**"Energy Price"** means, for any Contract Year, the applicable amount set forth on Exhibit D.

**"Environmental Attributes"** means any and all environmental benefits, air quality credits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to energy generation by a renewable fuel source and its displacement of energy generation by conventional, nonrenewable, and/or carbon-based fuel sources. Environmental Attributes include, but are not limited to, (1) any benefit accruing from the renewable nature of the generation's motive source; (2) any avoided emissions of pollutants to the air, soil, or water (such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants other than those that are regulated pursuant to state or federal law); (3) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (4) any property rights that may

exist with respect to the foregoing attributes howsoever entitled; (5) any green tags, renewable energy credits or similar credits, including RECs described in Conn. Gen. Stat. § 16-245a et seq. (“RECs”); and (6) any reporting rights to these avoided emissions, including, but not limited to, green tag or REC reporting rights. Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes, (ii) Environmental Incentives, or (iii) emission reduction credits encumbered or used for compliance with local, state, or federal operating and/or air quality permits.

“Environmental Incentives” means any and all financial incentives, from whatever source, related to the construction, ownership, or operation of the System. Environmental Incentives include, but are not limited to, (i) federal, state, or local tax credits; (ii) any other financial incentives in the form of credits, reductions, or allowances that are applicable to a local, state, or federal income taxation obligation; and (iii) other grants, rebates, or subsidies, including utility incentive programs, and any incentive provided through the State of Connecticut Low Emission Renewable Energy Credit (“LREC”) and Zero Emission Renewable Energy Credit (“ZREC”) Programs. Environmental Incentives do not include Environmental Attributes.

“Exercise Period” has the meaning set forth in Section 5.2.

“Financing Party” has the meaning set forth in Section 11.1.

“Force Majeure” means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of and without the fault or negligence of, the Party relying thereon as justification for such delay, nonperformance, or noncompliance, which includes, without limitation, an act of God or the elements, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood, volcanic eruption or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure.

“Governmental Authorities” means the United States of America and any political subdivision thereof and any agency, department, commission, board, court, or instrumentality thereof.

“Independent Appraiser” has the meaning set forth in Section 5.2.

“Interest Rate” means an annual rate equal to (a) the rate published in *The Wall Street Journal* as the “Prime Rate” (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due; plus (b) five percentage points (5%); provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by applicable law.

“kWh” means kilowatt-hours.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit issued by either a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s, in a form acceptable to Seller.

“Net Metering Rules” means the rules established pursuant to Conn. Gen. Stat. § 16-243h or Conn. Gen. Stat. § 16-244u.

“Owner” has the meaning set forth in the Preamble.

“Party” and “Parties” have the meanings set forth in the Preamble.

“Performance Assurance” means collateral in an amount as reasonably determined by Seller and in a form (e.g., cash, Letter(s) of Credit, guaranty, or other security or credit assurance) reasonably acceptable to Seller.

“Person” means any individual, corporation (including, without limitation, any non-stock or non-profit corporation), limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or governmental body.

“PPA Damages” has the meaning set forth in Section 10.4.

“Premises” means all the real property and improvements commonly known as [Conservation Garage, 50 One Rod Highway, Fairfield, CT 06824], including without limitation, the Project Site, but not the System.

“Price Determination” has the meaning set forth in Section 5.2.

“Prudent Operating Practice” means the practices, methods, and standards of professional care, skill, and diligence engaged in or approved by a significant portion of the electric power industry for solar energy facilities of similar size, type, and design as the System that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with applicable law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition.

“Purchase Option” has the meaning set forth in Section 5.1.

“Purchase Price” has the meaning set forth in Section 5.2.

“Purchase Option Dates” has the meaning set forth in Section 5.1.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Event of Default” has the meaning set forth in Section 10.3.

“Purchaser Indemnified Parties” has the meaning set forth in Section 14.1.

"Renewal Rate" shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the Purchase Option contained in this Agreement.

"Seller" has the meaning set forth in the Preamble.

"Seller Event of Default" has the meaning set forth in Section 10.1.

"Seller Indemnified Parties" has the meaning set forth in Section 14.2.

"Site Lease" has the meaning set forth in the Recitals.

"System" means the solar energy generating system described in Exhibit B.

"Transfer Date" has the meaning set forth in Section 5.3.

"Utility" means the United Illuminating Company.

**EXHIBIT B**

**DESCRIPTION OF THE SYSTEM**

DC System Size: 19.8 kW  
AC System Size: 16.4 kW  
Estimated Annual Energy  
Output: 23.49 MWh  
Modules: Canadian Solar CS6X-325P (325W) or similar  
Total # of Panels: 61  
Inverters: Fronius Primo 8.2-1 or similar  
Total # of Inverters: 2  
Optimizers: [n/a]  
Total # of Optimizers: [n/a]  
Racking: [Iron Ridge Roof Mounting]



## EXHIBIT C

### INSURANCE REQUIREMENTS

(a) Seller shall obtain and maintain the following insurance policies:

(i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System, including products and completed operations and personal injury insurance, as well as Automobile Insurance, of not less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate. Purchaser shall be named as an additional insured under this liability insurance, provided however that Seller shall in no event be obligated to repair or replace Purchaser's buildings or Premises. Seller, if it has employees, shall also maintain at all times during the term of this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Purchaser's request annually thereafter, and so long as Seller elects not to self-insure, Seller shall deliver to Purchaser certificates of insurance evidencing such coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Purchaser, and shall include provisions regarding waiver of subrogation;

(ii) Seller shall cause to be provided and maintained, at its sole cost, "all-risk" property insurance covering the System during all periods that Seller is the beneficial owner of such System. Such insurance shall be primary coverage without right of contribution from any insurance of Seller;

(iii) Seller may satisfy the insurance requirements contained in this Agreement through any combination of primary and/or excess coverage; and

(iv) Seller may elect to self-insure any or all of the insurance requirements contained in this Agreement.

(b) Purchaser shall obtain and maintain the following insurance policies:

(i) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;

(ii) Employer's liability insurance of not less than one million dollars (\$1,000,000);

(iii) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate. Seller shall be named as an additional insured under this liability insurance;

(iv) Property insurance on the Premises, written on an "all risk" or broad special perils form, in an amount equal to the full current replacement value of the property, on an agreed

value (no coinsurance) basis, and with a deductible not to exceed \$10,000. Such coverage may be written as part of a blanket property policy, but if written as part of a blanket policy Purchaser must provide evidence that the policy does not include a margin clause, or, if there is a margin clause, that the value declared is equal to the full current replacement value of the property. Seller must be named as loss payee on the policy with ISO form CP 12 18 06 07 Loss Payable Provisions, Clause D, or equivalent, and the policy must provide for ten (10) days' notice to Seller in the event of cancellation or nonrenewal;

(v) Purchaser may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and

(vi) Purchaser may elect to self-insure any or all of the insurance requirements contained in this Agreement.

**EXHIBIT D**

**ENERGY PRICE**

<i>Contract Year</i>	<i>Energy Price (\$/kWh)</i>
1	\$0.081
2	\$0.081
3	\$0.081
4	\$0.081
5	\$0.081
6	\$0.081
7	\$0.081
8	\$0.081
9	\$0.081
10	\$0.081
11	\$0.081
12	\$0.081
13	\$0.081
14	\$0.081
15	\$0.081
16	\$0.081
17	\$0.081
18	\$0.081
19	\$0.081
20	\$0.081

**EXHIBIT E**

**MINIMUM SYSTEM PURCHASE PRICE**

<i>Contract Year</i>	<i>Minimum System Purchase Price</i>
5	\$30,453
6	\$45,723
7	\$41,175
8	\$37,498
9	\$33,839
10	\$30,199
11	\$26,577
12	\$22,973
13	\$19,387
14	\$15,819
15	\$12,269
16	\$8,737
17	\$6,972
18	\$5,216
19	\$3,468
20	\$1,730

**Exhibit F**

**PERMITS AND APPROVALS**

1. Interconnection Application
2. Building Permit
3. Electrical Permit
4. Electric Utility Contingent Approval
5. Interconnection Agreement
6. Municipal Certificate of Completion
7. Electric Utility Witness Test
8. Electric Utility Approval to Operate

**Exhibit G**

**MAINTENANCE SHUTDOWN ALLOTMENT**

<i>Contract Year</i>	<i>kWh</i>
1	322
2	322
3	322
4	322
5	322
6	322
7	322
8	322
9	322
10	322
11	322
12	322
13	322
14	322
15	322
16	322
17	322
18	322
19	322
20	322

## SYSTEM SITE LEASE AGREEMENT

This SYSTEM SITE LEASE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2016 (the "Effective Date") by and between CEFIA Holdings LLC, a Connecticut limited liability company ("Lessee"), and the Town of Fairfield, a municipal corporation organized and existing under the laws of the State of Connecticut ("Lessor"). Each of Lessor and Lessee are sometimes referred to as a "Party" and collectively as the "Parties."

**WHEREAS**, Lessor is the owner of certain real property located in Fairfield, Connecticut together with certain improvements, buildings, and other structures consisting of the Conservation Garage located at 50 One Rod Highway, Fairfield, CT 06824, as more particularly described on Exhibit A attached hereto (the "Premises") and which includes the area on which the System will be installed (the "Project Site");

**WHEREAS**, Lessee is the developer, owner, and operator of photovoltaic solar energy generation equipment and facilities;

**WHEREAS**, Lessee (as Seller) and Lessor (in this capacity, "Purchaser") are parties to that certain Solar Power Purchase Agreement dated of even date herewith (the "Solar PPA"), pursuant to which Lessee has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Lessee, all of the electrical energy produced by the System (as defined in the Solar PPA) to be installed and operated on the Premises by Lessee; and

**WHEREAS**, as a condition to entering into the Solar PPA, Lessee requires Lessor to enter this Agreement.

**NOW, THEREFORE**, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

### AGREEMENT

1. **DEFINITIONS.** Capitalized terms used but not defined herein shall have the meanings assigned to them in the Solar PPA.

2. **LEASE.**

2.1 Lease. Lessor hereby leases the Project Site to Lessee in accordance with the terms and conditions and for the purposes set forth herein. The Parties intend that this lease create a valid and present interest in the Project Site in favor of Lessee. Therefore, this Agreement is an interest in and encumbrance upon the Project Site which shall run with the land and shall be binding upon the Project Site and Lessor and its successors and assigns for the benefit of Lessee and its successors and assigns.

**2.2 Term.** The term of this Agreement shall be for twenty (20) years and shall be coterminous with the Solar PPA, commencing on the Effective Date (the "Term"); provided that this Agreement shall terminate (i) automatically upon the termination or expiration of the Solar PPA for a reason other than an Event of Default by Lessee in its capacity as Purchaser under the Solar PPA, and (ii) in the case of termination by Lessee following an Event of Default by Lessor in its capacity as Purchaser under the Solar PPA, following the payment of PPA Damages (as defined in the Solar PPA) to Lessee.

**2.3 Payment to Lessor.** Lessee shall pay to Lessor as rent the one-time sum of \$1.00 (the "One-Time Payment") within fifteen (15) days after the Effective Date. Lessor acknowledges and agrees that the One-Time Payment constitutes payment in full of rent for the Term, and no additional amount shall be due or owing to Lessor under this Agreement.

**2.4 Permitted Uses.** Lessee shall have the right to occupy and use the Project Site for solar energy conversion, for the collection and transmission of electric power, and for related and incidental purposes and activities (collectively, "Operations") including, but not limited to, the construction, installation, improvement, relocation, operation, maintenance and repair of the System and, as may be occasioned by the termination of the Solar PPA, removal of the System.

**2.5 Lessee's Exercise of Rights.** Lessee may construct and install the System on the Premises in the manner Lessee deems reasonable and appropriate; provided, however, that Lessee shall not unreasonably interfere with Lessor's use, operation, or maintenance of the Premises. The System shall be installed within the areas of the Project Site.

**2.6 Premises Utilities.** Lessor shall provide existing and available utilities to the Project Site in connection with Lessee's construction, start-up, maintenance, repair, replacement, operation and removal of the System. Lessor acknowledges and agrees that Lessee's use of the Premises includes the nonexclusive appurtenant right to the use of water lines, sewer lines, storm water lines, power lines, and telephone and communication lines. Without limiting the generality of the foregoing,

**2.7 Construction Laydown Area.** Lessor shall provide Lessee sufficient space on the Premises for the temporary storage and staging of tools, materials and equipment reasonably necessary during installation and any maintenance, repair, replacement or removal of the System, provided that Lessee shall use commercially reasonable efforts to minimize disruption to Lessor's operations, and provided further that Lessee understands and acknowledges that space is limited at the Premises. Lessor and Lessee shall coordinate and cooperate in determining the amount of space and specific portion of the Premises necessary for such purposes.

**2.8 Notice.** Except as may be required by an emergency, Lessee shall give Lessor reasonable written or telephonic notice before any entry onto the Premises by Lessee's employees, agents, or contractors. In the event of Lessee's entry due to an emergency, Lessee shall promptly notify Lessor of its entry and the nature of the emergency.



### 3. EASEMENTS.

3.1 Access Easement and Use Rights. Lessor grants Lessee a nonexclusive easement for access and use of the Premises, on, under, over, and across the Premises and any other real property adjacent to the Premises and owned by Lessor (collectively, the "Easement Area"), for the purposes of locating, installing, operating, maintaining, improving, repairing, relocating, and removing the System on the Premises (the "Use Rights"). The Use Rights include the right of parking, access, and ingress to and egress from the System on, over, and across the Easement Area during the Term, and shall survive, unless Purchaser has exercised the Purchase Option, for a period of one hundred eighty (180) days following the termination of this Agreement for the purpose of removing the System. Without limiting the foregoing grant, Lessor covenants that the Use Rights may be used to achieve all the purposes set forth in the Solar PPA.

3.2 Solar Easement. Lessor hereby grants Lessee a solar easement on, over, and above the Easement Area for the free passage of solar radiation to the System. Lessor shall not obstruct, or allow any tenant or assignee of Lessor to obstruct, the passage of direct solar radiation across the Easement Area to the System. Trees, structures, and improvements located on the Easement Area as of the Effective Date shall be allowed to remain, and Lessee may not require their removal; provided that Lessee may require that any trees or other vegetation be pruned or trimmed to the point that they do not obstruct the passage of direct solar radiation across the Easement Area to the System to a degree greater than on the Effective Date. Lessor shall not place or plant any trees, structures, or improvements on the Easement Area after the Effective Date that may, in Lessee's sole judgment, impede or interfere with the passage of direct solar radiation to the System, unless Lessor has received prior written approval from Lessee. Lessee and Lessor further agree to execute and record such instruments or addenda to this Agreement as may be required under applicable State or local law to evidence the solar easement granted in this Section.

### 4. RIGHTS OF LESSEE.

4.1 Solar Resources. Lessee shall have the sole and exclusive right to convert all of the solar resources of, and to conduct Operations on, the Premises. Lessor shall not grant any rights in the Premises purporting to permit others to conduct Operations on the Premises in derogation of Lessee's sole and exclusive rights and privileges hereunder. Without the prior written consent of Lessee, Lessor shall not (i) waive any right available to Lessor or grant any right or privilege subject to the consent of Lessor by law or contract, including without limitation any environmental regulation, land use ordinance, or zoning regulation, with respect to setback requirements, or other restrictions and conditions respecting the placement of the System on the Premises or (ii) grant, confirm, acknowledge, recognize, or acquiesce in any right claimed by any other Person to conduct Operations on the Premises, and Lessor agrees to give Lessee notice of any such claims and to cooperate with Lessee in resisting and disputing such claims.

4.2 Signage. Lessee shall have the right to erect, modify, and maintain reasonable signage on the Premises with respect to the System and to Lessee's interests therein. Lessee shall, at Lessee's expense, obtain all necessary permits and approvals of appropriate land use bodies required to erect said signage.

4.3 Enforcement of Legal Rights. Lessee shall have the right to enforce Lessor's

rights under applicable laws protecting solar energy systems from obstruction. Lessor shall cooperate with any efforts by Lessee to enforce such rights. Lessee shall bear all costs and expenses incurred in enforcing said rights.

## **5. DESIGN AND CONSTRUCTION OF SYSTEM.**

**5.1 Design and Construction.** Lessor hereby consents to the construction of the System in accordance with the plans and specifications set forth on the attached Exhibit C. Lessee shall coordinate construction of the System so as to reasonably minimize disruption to the Premises and to Lessor's activities thereon.

**5.2 Removal Upon Termination.** Upon the termination or expiration of this Agreement for any reason, unless Purchaser has exercised the Purchase Option, Lessee shall, within one hundred and eighty (180) days after the date of expiration, remove the System from the Premises, provided that Lessee shall not be required to remove electrical wiring or infrastructure, or any portion of the System below grade level. Other than as specifically provided otherwise herein or in the Solar PPA, the removal of the System shall be at the cost of Lessee. Lessee shall restore the premises to the same condition as at the commencement of this agreement less usual wear and tear.

## **6. THE PREMISES.**

**6.1 Representations of Lessor.** Lessor represents and warrants to Lessee that:

6.1.1 Lessor has the requisite capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its legislative body, and that the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Lessor;

6.1.2 This Agreement constitutes Lessor's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

6.1.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Lessor that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Lessor to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Lessor;

6.1.4 Lessor owns the Premises in fee simple, subject to no liens or encumbrances except as set forth in Exhibit B.

**6.2 Confirmation of Ownership.** At the request of Lessee, Lessor shall obtain executed and acknowledged instruments and such other documents as Lessee or Lessee's title company may require to confirm Lessor's ownership of the Premises or to complete or evidence the full granting of the leasehold interest in the Project Site as intended by this Agreement.

### 6.3 Liens.

#### 6.3.1 Intentionally left blank.

6.3.2 Notice to Premises Lienholders and Release. Lessor shall give effective notice of Lessee's ownership of the System and the System's status as personal property to all parties having an interest in or any mortgage, pledge, lien (including mechanics', labor or materialmen's liens), charge, security interest, or encumbrance of any nature (collectively, "Liens") upon the real property and fixtures that are part of the Premises. If there is any Lien against the Premises that could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Lessor shall obtain a disclaimer or release of such Lien. Lessor consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises, and any other filing by Lessee in a public office regarding its ownership of the System deemed necessary or appropriate by Lessee, and Lessor hereby appoints Lessee as its agent with regard to any such filing and authorizes Lessee to take required actions on Lessor's behalf required for such filing.

6.3.3 System Liens. Lessor shall not directly or indirectly allow any Lien on or with respect to the System by, through or under Lessor. If Lessor becomes aware of a Lien on the System by, through or under Lessor, Lessor shall promptly give Lessee written notice of such Lien and shall take such action as is necessary or appropriate to have such Lien discharged and removed. Lessor shall indemnify Lessee against all reasonable costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such Lien.

6.3.4 Premises Liens. Lessee shall not directly or indirectly allow any Lien by, through or under Lessee, on or with respect to the Premises or any interest therein, excluding Lessee's leasehold interest created pursuant to this Agreement, or any other asset of Lessor, including, without limitation, any Lien arising from or relating to the construction, ownership, maintenance or operation of the System by Lessee. Lessee shall defend and indemnify Lessor against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any such Lien.

6.4 Quiet Enjoyment. Lessee shall enjoy quiet and peaceful use, enjoyment and possession of the Project Site, 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, and neither Lessor nor any person claiming by, through or under Lessor shall disturb Lessee's quiet and peaceful use, enjoyment and possession of the Project Site.

6.5 No Interference. Lessor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation activities that may adversely affect the System's exposure to sunlight. Lessor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Agreement; (ii) take any action that will interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Lessee's access to the Premises for the

purposes specified in this Agreement; (v) plant or maintain any vegetation or erect or maintain any structure that will, during daylight, cast a shadow on the System; or (vi) take any action that may impair Lessee's access to any portion of the System.

**6.6 System Property of Lessee; Transfer of the Premises.** Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the System and all equipment (including, but not limited to, photovoltaic modules or panels, inverters, meters, wire, data monitoring equipment, and cabling), components and moveable property of Lessee attached to or used in the operation of the System, that no portion or component of the System is a fixture, and that in the event that the Premises are sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered (a "Transfer"), such Transfer shall not attach to or affect the System, or Lessee's ownership rights to the System.

**6.7 Transfer of Premises.** Lessor shall not Transfer all or any portion of the Premises unless the transferee agrees in writing that its interest in the Premises is subject and subordinate in all respects to the terms of this Lease. Lessor shall give Lessee at least sixty (60) days' prior notice of any Transfer of all or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer.

**6.8 Premises Security, Health and Safety.** Lessor shall continue to provide any existing security measures at the Premises that are in place as of the Effective Date of this Agreement. Lessor shall maintain the Premises in a structurally sound and safe condition consistent with all applicable Laws. If Lessor becomes aware of any circumstances relating to the System that creates an imminent risk of damage or injury to the System or any employee of Lessee, Lessor shall promptly notify Lessee.

**6.9 System Security.** Lessee may install, at Lessee's expense, all security measures that Lessee, in its sole discretion, determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Operations. Such measures shall not interfere with the use of the Premises.

**6.10 Maintenance of Premises.** Lessor shall, without interfering with the operation of the System, maintain the Premises in good condition and repair, including the integrity of the roof, and shall use commercially reasonable efforts to maintain Lessor's electrical energy equipment located on the Premises in good condition and repair so as to be able to receive and use the Energy generated by the System. Lessor shall maintain its connection and service contract(s) with its local utility, or any successors thereto, so that Lessor can, upon any suspension or interruption of delivery of energy from the System, provide the Premises with its full requirements for electricity.

**6.11 System Maintenance.** During the Contract Term, Lessee shall, at Lessee's sole cost, maintain the System, the Project Site and all areas of the Premises used by Lessee in the Operations, in accordance with applicable laws.

**6.12 Clean Condition.** Lessee shall not unreasonably clutter the Project Site or the Premises and shall collect and dispose of any and all of Lessee's refuse and trash.

6.13 Taxes. Lessor shall pay when due all real property taxes and assessments levied against the Premises by any governmental body. If applicable, Lessee shall pay all personal property taxes levied on the system. Failure to pay said taxes shall constitute a Lessee Default.

## 7. DEFAULT; REMEDIES.

7.1 Lessee Default. Each of the following events shall constitute a "Lessee Default":

7.1.1 Lessee breaches any material term of this Agreement and (i) if such breach is capable of being cured within thirty (30) days after Lessor's notice of such breach, Lessee has failed to cure the breach within such thirty (30) day period, or (ii) if Lessee has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Lessee has failed to cure the breach within a further one hundred and fifty (150) day period (such aggregate period not to exceed one hundred and eighty (180) days from the date of Lessor's notice); and

7.1.2 (i) Lessee commences a voluntary case under any bankruptcy law; (ii) Lessee fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessee in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Lessee remains undismissed or undischarged for a period of sixty (60) days.

7.2 Lessor's Remedies. If a Lessee Default has occurred and is continuing, Lessor may terminate this Agreement by written notice to Lessee following the expiration of the applicable cure period, and may exercise any other remedy it may have at law or equity.

7.3 Lessor Defaults. The following events shall be defaults with respect to Lessor (each, a "Lessor Default"):

7.3.1 Lessor breaches any material term of this Agreement and such breach remains uncured for thirty (30) days following notice of such breach to Lessor; and

7.3.2 (i) Lessor commences a voluntary case under any bankruptcy law; (ii) Lessor fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessor in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Lessor remains undismissed or undischarged for a period of sixty (60) days.

7.4 Lessee's Remedies. If a Lessor Default has occurred and is continuing, Lessee may terminate this Agreement by written notice to Lessor following the expiration of the applicable cure period. Lessee may also exercise any other remedy it may have at law or equity, including recovering from Lessor all resulting damages, which damages shall include, but not be limited to, the PPA Damages and all other amounts of any nature due under this Agreement.

## 8. LIMITATIONS.

8.1 Limitation of Liability. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN

CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS AGREEMENT. THE FOREGOING NOTWITHSTANDING, THE PPA DAMAGES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

**8.2 Equitable Relief.** The Parties acknowledge that money damages would not be a sufficient remedy for any breach of this Agreement, and that, accordingly, in the event of any such breach or threatened breach, either Party shall be entitled to immediately seek any and all remedies available to it at law or in equity, including but not limited to an injunction or specific performance, from a court of competent jurisdiction.

## **9. FINANCING ACCOMMODATIONS.**

**9.1 Lessor Acknowledgment.** Lessor acknowledges that Lessee may finance the System and that Lessee's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a security interest in the System. In order to facilitate such financing, and with respect to each Financing Party Lessor agrees as follows:

**9.1.1 Consent to Collateral Assignment.** Lessee shall have the right to assign this Agreement as collateral for financing or refinancing of the System, and Lessor hereby consents to the collateral assignment by Lessee to any Financing Party of Lessee's right, title, and interest in and to this Agreement.

**9.1.2 Financing Party's Rights Following Default.** Notwithstanding any contrary term of this Agreement:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Lessee, any and all rights and remedies of Lessee under this Agreement in accordance with the terms of this Agreement. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System. Financing Party shall, as a condition of this Lease, Perform all obligations of Lessee pursuant to the Solar Power Purchase Agreement.

(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty, or obligation required of Lessee hereunder or cause to be cured any default or event of default of Lessee in the time and manner provided by the terms of this Agreement. Nothing herein requires Financing Party to cure any default of Lessee (unless Financing Party has succeeded to Lessee's interests) to perform any act, duty, or obligation of Lessee, but Lessor hereby gives Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Lessee to Financing Party, Financing Party shall give notice to Lessor of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a Lessee Default.

(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Lessee under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Lessor shall enter into a new site lease agreement with Financing Party or its assignee on substantially the same terms as this Agreement.

9.1.3 Financing Party Cure Rights. Lessor shall not exercise any right to terminate or suspend this Agreement unless Lessor has given prior written notice to each Financing Party of which Lessor has notice. Lessor's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party has the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition; provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Lessor's and Lessee's obligations under this Agreement shall otherwise remain in effect, and Lessor and Lessee shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

9.1.4 Continuation Following Cure. If Financing Party or its assignee acquires title to or control of Lessee's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 9.1.3, then this Agreement shall continue in full force and effect.

9.2 Notice of Defaults and Events of Default. Lessor agrees to deliver to each Financing Party a copy of all notices that Lessor delivers to Lessee pursuant to this Agreement.

## 10. NOTICES.

10.1 Notices. Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Lessee: CEFIA Holdings LLC  
845 Brook Street  
Rocky Hill, CT 06067  
Attention: General Counsel

To Lessor: Town of Fairfield  
Sullivan Independence Hall, Second Floor  
725 Old Post Road  
Fairfield, CT 06824  
Attention: First Selectman

## 11. GOVERNING LAW; VENUE.

11.1 Choice of Law. This Agreement shall be construed in accordance with the laws

of the State of Connecticut, without regard to its conflict of laws principles.

**11.2 VENUE.** LESSOR AND LESSEE EACH HEREBY IRREVOCABLY SUBMITS IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN FAIRFIELD COUNTY, CONNECTICUT AND WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION THAT IT MAY HAVE UNDER THE LAWS OF THE UNITED STATES OR OF ANY STATE. LESSOR AND LESSEE EACH WAIVE ANY OBJECTION THAT IT MAY HAVE (INCLUDING, WITHOUT LIMITATION, ANY OBJECTION OF THE LAYING OF VENUE OR BASED ON FORUM NON CONVENIENS) TO THE LOCATION OF THE COURT IN WHICH ANY PROCEEDING IS COMMENCED.

## **12. INDEMNIFICATION.**

**12.1 Lessee's General Indemnity.** Lessee shall indemnify, defend, and hold harmless Lessor (including Lessor's permitted successors and assigns) and Lessor's subsidiaries, directors, officers, members, shareholders, and employees (collectively, "Lessor Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Lessor Indemnified Parties arising from or relating to (i) Lessee's breach of this Agreement, or (ii) Lessee's negligence or willful misconduct. Lessee's indemnification obligations under this Section 12.1 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessor Indemnified Party.

**12.2 Lessee's Environmental Indemnity.** Lessee shall indemnify, defend and hold harmless the Lessor Indemnified Parties against, any claims, costs, damages, fees, or penalties arising from a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

**12.3 Lessor's General Indemnity.** Lessor shall indemnify, defend, and hold harmless Lessee (including Lessee's permitted successors and assigns) and Lessee's subsidiaries, directors, officers, members, shareholders, and employees (collectively, "Lessee Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including PPA Damages and reasonable attorneys' fees, incurred by Lessee Indemnified Parties arising from or relating to (i) Lessor's breach of this Agreement, (ii) the negligence or willful misconduct of Lessor, Lessor's tenants, or Lessor's invitees, or (iii) the failure of building or roof to support, in whole or in part, the System as installed, including changes in roof surface incline. Lessor's indemnification obligations under this Section 12.3 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessee Indemnified Party.

**12.4 Lessor's Environmental Indemnity.** Lessor shall indemnify, defend and hold harmless the Lessee Indemnified Parties for, from, and against, any claims, costs, damages, fees,



or penalties, including PPA Damages, arising from the presence of any Hazardous Materials on or under the Premises, except to the extent that such presence is attributable to a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

### 13. INSURANCE.

**13.1 Insurance Required.** Each Party shall maintain in full force and effect throughout the Contract Term insurance coverage in the amounts and types set forth on Exhibit D. Each policy of insurance maintained by each Party shall: (a) name the other Party as loss payee (to the extent covering risk of loss or damage to the Premises or the System ) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to the relevant Party. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

**13.2 Waiver of Subrogation.** Each policy of insurance required hereunder shall provide for a waiver of subrogation rights against the other Party, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy.

**13.3 No Waiver of Obligations.** The provisions of this Agreement shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

### 14. MISCELLANEOUS.

**14.1 Assignments.** Neither Party shall have the right to assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Lessee may assign any of its rights, duties, or obligations under this Agreement, without the consent of Lessor, (i) to any of its affiliates, (ii) to any third party in connection with a financing transaction, or (iii) to any purchaser of the System.

**14.2 Entire Agreement.** This Agreement and the Solar PPA represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

**14.3 Amendments.** This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Lessee and Lessor.

**14.4 No Partnership or Joint Venture.** Lessee and Lessee's agents, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Lessor. This Agreement shall not impart any rights enforceable by any third party

(other than a permitted successor or assignee bound to this Agreement).

**14.5 Headings; Exhibits.** The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement. Any Exhibits referenced within and attached to this Agreement, including any attachments to the Exhibits, shall be a part of this Agreement and are incorporate by reference herein.

**14.6 Remedies Cumulative; Attorneys' Fees.** No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law 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. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

**14.7 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. Any such waiver must be in a writing executed by the Party making such waiver.

**14.8 Severability.** If any part, term, or provisions of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement and shall not render this Agreement unenforceable as a whole. Instead, the part of the Agreement found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

**14.9 Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (".PDF") signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

**14.10 No Partnership or Sale.** Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, buyer and seller real property, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

**14.11 Memorandum of Lease.** Lessor and Lessee agree to execute and record a memorandum of this Lease. Lessor shall execute, with notarization, and deliver to Lessee together with its initial delivery of the signed Agreement a recordable Memorandum of Lease in form reasonably acceptable to the Parties ("Memorandum of Lease") which shall include the Exhibit A description of the Project Site and which Lessee shall then record in the Official Records of the municipality in which the Project Site is located. Lessee shall be responsible for the cost of recordation.

**14.12 Estoppel Certificate.** From time to time, upon written request by Lessee, Lessor shall provide within seven (7) days thereafter an estoppel certificate attesting, to the knowledge of Lessor, of Lessee's compliance with the terms of this Agreement, or detailing any known issues of noncompliance.

**15. FREEDOM OF INFORMATION ACT.** Green Bank is a "public agency" for purposes of the Connecticut Freedom of Information Act ("FOIA"). This Agreement and information received pursuant to this Agreement will be considered public records and will be subject to disclosure under the FOIA, except for information falling within one of the exemptions in Conn. Gen. Stat. Sections § 1-210(b) and § 16-245n(d).

The Parties agree that Attachment C hereto and any attachment or exhibit provided by Contractor in compliance therewith are proprietary and confidential, and there is no necessity to mark such documents to achieve the status of proprietary and confidential.

Contractor acknowledges that (1) Green Bank has no obligation to notify Contractor of any FOIA request it receives, (2) Green Bank may disclose materials claimed by Contractor to be exempt if in its judgment such materials do not appear to fall within a statutory exemption, (3) Green Bank may in its discretion notify Contractor of FOIA requests and/or of complaints made to the Freedom of Information Commission concerning items for which an exemption has been claimed, but Green Bank has no obligation to initiate, prosecute, or defend any legal proceeding, or to seek to secure any protective order or other relief to prevent disclosure of any information pursuant to an FOIA request, (4) Contractor will have the burden of establishing the availability of any FOIA exemption in any such legal proceeding, and (5) in no event shall Green Bank or any of its officers, directors, or employees have any liability for the disclosure of documents or information in Green Bank's possession where Green Bank, or such officer, director, or employee, in good faith believes the disclosure to be required under the FOIA or other law.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the Parties have caused this System Site Lease Agreement to be duly executed and delivered as of the Effective Date.

**LESSEE**

CEFIA Holdings LLC

By: \_\_\_\_\_  
Name:  
Title:

**LESSOR**

Town of Fairfield

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**

**PREMISES; PROJECT SITE**

The Premises are certain real property located in the town of Fairfield, Connecticut together with certain improvements, buildings, and other structures consisting of the Conservation Garage located at 50 One Rod Highway, Fairfield, CT 06824.

The Project Site will be the roof of the Conservation Garage, to be laid out approximately as follows:



**EXHIBIT B**

**ENCUMBRANCES ON LESSOR'S TITLE**

None

**EXHIBIT C**

**SYSTEM DESCRIPTION**

Comment [LAF1]: Please confirm

DC System Size: 19.8 kW  
AC System Size: 16.4 kW  
Estimated Annual Energy  
Output: 23.49 MWh  
Modules: Canadian Solar CS6X-325P (325W) or similar  
Total # of Panels: 61  
Inverters: Fronius Primo 8.2-1 or similar  
Total # of Inverters: 2  
Optimizers: [n/a]  
Total # of Optimizers: [n/a]  
Racking: [Iron Ridge Roof Mounting]

## EXHIBIT D

### INSURANCE REQUIREMENTS

(a) Lessee shall obtain and maintain the following insurance policies:

(i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System of not less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate. Lessor shall be named as an additional insured under this liability insurance, provided however that Lessee shall in no event be obligated to repair or replace Lessor's buildings or Premises;

(ii) Lessee may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and

(iii) Lessee may elect to self-insure any or all of the insurance requirements contained in this Agreement.

(b) Lessor shall obtain and maintain the following insurance policies:

(i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate. Lessee shall be named as an additional insured under this liability insurance;

(ii) Property insurance on the Premises, written on an "all risk" or broad special perils form, in an amount equal to the full current replacement value of the property, on an agreed value (no coinsurance) basis, and with a deductible not to exceed \$10,000. Such coverage may be written as part of a blanket property policy, but if written as part of a blanket policy Lessor must provide evidence that the policy does not include a margin clause, or, if there is a margin clause, that the value declared is equal to the full current replacement value of the property. Lessee must be named as loss payee on the policy with ISO form CP 12 18 06 07 Loss Payable Provisions, Clause D, or equivalent, and the policy must provide for ten (10) days' notice to Lessee in the event of cancellation or nonrenewal;

(iii) Lessor may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and

(iv) Lessor may elect to self-insure any or all of the insurance requirements contained in this Agreement.



TO: Board of Selectmen

FROM: Edward Boman  
Assistant Director of Public Works

Date: December 30, 2016

RE: Two Solar photovoltaic (PV) Power Purchase Agreements and two Lease Agreements at:

The Conservation Garage at 50 Richard White Way  
Public Works Garage at 357 Veres Street

**Background**----The State of Connecticut created a new program to carry out two goals: (1) decentralize the power grid and (2) increase the amount of green power available in the State. The program is called ZREC/LREC , which is short for Zero emission Renewable Energy Credits and Low emissions Renewable Energy Credits. The credits are created by the New England Power Pool General Information System (NEPOOL GIS). They are applied for by a developer and sold to United Illuminating as part of the program.

As Part of the program, UI is required to make or purchase 20% of its power from Class I green energy sources over the next 22 years. The ZREC/ LREC program provides 15 year financing to build private, non-utility Class I power plants. Examples of ZREC include solar PV, wind and Hydro; LREC is limited to fuel cells.

1. **Purpose and Justification**—The purpose of this request is to lower the cost Fairfield pays for electricity over the next twenty years without any capital or other cost. The justification for doing the program as a Power Purchase Agreement (PPA) is to minimize municipal risk. The private sector designs, finances, builds , owns, maintains and operates the facilities.
2. **Detailed Description of the Proposal** all of the solar arrays will be located on the roof of the buildings.
- | Name                         | Size           | Annual production |
|------------------------------|----------------|-------------------|
| • Conservation Garage        | 24.5kw         | 24,500kwh         |
| • <u>Public Works Garage</u> | <u>55.71kw</u> | <u>55,710kwh</u>  |
| Totals                       | 80.21wh        | 80,210kwh         |
3. **Reliability of Estimated Cost**—There are no costs to the Town for these Power Purchase Agreements. CEFIA's electric price to the Town is based on low bids awarded by UI for a guaranteed 15 year payout.
4. **Increased Productivity or Efficiency**- -Not Applicable
5. **Additional Long Range Costs**—None

**6. Additional Use or Demand on Existing Facilities—None**

**7. Alternatives To This Request—**The only alternative is to do nothing and lose the opportunity.

**8. Safety and Loss Control—**There should be no impact as the facilities are owned, maintained, and insured by the private owners with the Town named as coinsured.

**9. Environmental Considerations—**Are all positive. 100% of the Buildings electricity will come from renewable resources with zero emissions.

**10. Insurance—NA**

**11. Financing—NA**

**12. Other Considerations—None**

**13. Other Approvals—RTM (Lease)**

## SOLAR POWER PURCHASE AGREEMENT

This SOLAR POWER PURCHASE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2016 (the "Effective Date") by and between CEFIA Holdings LLC, a Connecticut limited liability company ("Seller"), and the Town of Fairfield, a municipal corporation organized and existing under the laws of the State of Connecticut ("Purchaser"). Each of Seller and Purchaser are sometimes referred to as a "Party" and collectively as the "Parties."

### RECITALS

WHEREAS, Purchaser conducts its municipal business at the Premises (defined below);

WHEREAS, the Premises are owned by Purchaser (in its capacity as owner of the Premises, "Owner");

WHEREAS, Owner and Seller are parties to that certain System Site Lease Agreement dated of even date herewith (the "Site Lease"), pursuant to which Owner has leased to Seller that certain portion of the Premises referred to herein as the Project Site (as defined in the Site Lease) and granted to Seller certain easements on, over, and across the Premises for the installation, maintenance, and operation of the System (defined below);

WHEREAS, Seller desires to install the System on the Project Site and sell the electricity generated from the System to Purchaser, on the terms set forth herein; and

WHEREAS, Purchaser desires to purchase from Seller the electricity generated from the System on the terms set forth herein.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

### AGREEMENT

1. **DEFINITIONS.** Capitalized terms used herein shall have the respective meanings set forth in Exhibit A.

2. **PURCHASE AND SALE OF ENERGY.**

2.1 Sale of Energy. Seller shall sell to Purchaser and Purchaser shall purchase from Seller all of the Energy, as and when the same is produced, at the Energy Price in effect at the time of delivery. Seller shall deliver the Energy to the Delivery Point, and Purchaser shall accept the Energy delivered for the full Contract Term.

2.1.1 If Purchaser's electric requirements are less than the Energy produced by the System for any reason, Purchaser shall nevertheless pay for such Energy and, to the extent permitted by applicable law, deliver any excess Energy to Utility in accordance with the Net Metering Rules or sell or exchange the excess Energy to any other buyer. Purchaser recognizes

that Seller has an interest in maximizing the output of the System, and Seller shall not be required to curtail the output of the System at any time due to lack of demand on the part of Purchaser.

2.1.2 To the extent that Purchaser's electricity requirements exceed the Energy produced by the System, Purchaser shall purchase such excess electricity from Utility in accordance with the Net Metering Rules. Purchaser shall be responsible for all charges, applicable taxes, penalties, ratcheted demand or similar charges assessed by Utility for transmission and distribution service and other services necessary to meet the full energy requirements of Purchaser.

2.1.3 Purchaser shall be entitled to the entire Energy output of the System; provided, however, that Seller shall not be required to cause the System to produce a minimum amount of Energy, and Seller is not guaranteeing any particular quantity of Energy production from the System.

2.2 Contract Term. The term of this Agreement shall be for a period of twenty (20) years commencing on the Commercial Operation Date (the "Contract Term").

2.3 Environmental Attributes. Seller shall have all right, title, and interest in and to all Environmental Attributes related to the System. At Seller's expense, Purchaser agrees to cooperate with Seller in any applications for Environmental Attributes related to the System.

2.4 Environmental Incentives. Any Environmental Incentive related to the System shall be the sole property of Seller. Any Environmental Incentive related to the System that is initially credited or paid to Purchaser shall be assigned by Purchaser to Seller without delay. At Seller's expense, Purchaser agrees to cooperate with Seller in any applications for Environmental Incentives related to the System.

2.5 Impairment of Environmental Attributes and Incentives. Purchaser shall not take any action or suffer any omission that would have the effect of reducing the production or impairing the value to Seller of the Environmental Attributes and Environmental Incentives. Purchaser shall be solely responsible for notifying Seller of any action or omission that could impair such value and for consulting with Seller as necessary to prevent impairment of the value of Environmental Attributes and Environmental Incentives.

### 3. THE SYSTEM.

3.1 Installation, Operation, and Maintenance of the System. Seller shall be responsible for the installation, operation, and maintenance of the System in a manner consistent with Prudent Operating Practice. If the supply of Energy from the System is interrupted as a result of malfunction or other shutdown, Seller shall use commercially reasonable efforts to remedy such interruption. Seller shall comply with all applicable laws and regulations relating to the operation of the System and the generation and sale of Energy, including obtaining and maintaining in effect all relevant approvals and permits, other than permits that, by their nature, can only be obtained by Purchaser.

#### 3.2 Critical Milestones

3.2.1 Milestones. Seller shall achieve the following development milestones on or before the date(s) set forth in the subsections below:

- a. Receipt of all permit(s) necessary to construct the System, no later than [12/16/16];
- b. Commencement of actual construction activities on the Premises, no later than [12/19/16]; and
- c. Achievement of Commercial Operation Date no later than [2/3/17].

3.3 Conditions Precedent to Commencement of Construction and Installation.

Commencement by the Seller of construction and installation activities shall be subject to the satisfaction of the following conditions precedent:

3.3.1 Seller shall have entered into the applicable contract(s) for construction and installation of the System, subject to the terms of the applicable financing, if any;

3.3.2 Seller shall have obtained the permits, licenses and other approvals required to be obtained by Seller prior to such commencement. Seller shall notify Purchaser in writing promptly if any permits, licenses or approvals are denied or if any third party has taken action that may hinder or delay the construction and installation of the System; and

3.3.3 Seller shall have received satisfactory notice that the applications for Environmental Incentives for the System at the Premises have been accepted and approved by the appropriate governing agency; provided, however, if any of the foregoing conditions precedent are not completed by [[2/3/17} Seller or Purchaser shall have the option to terminate this Agreement without triggering the default provisions of this Agreement and without triggering any liability under this Agreement. Alternatively, in the event that such conditions precedents are not satisfied by such date, the Parties may mutually agree in writing to amend this Agreement to revise the Commercial Operation Date and term of this Agreement.

3.4 Maintenance of Health and Safety. Seller shall take all reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the System and shall comply with all applicable health and safety laws, rules, regulations, and permit requirements. If Seller becomes aware of any circumstances relating to the Premises or the System that creates an imminent risk of damage or injury to any Person or any Person's property (and, should Purchaser become aware of such circumstances, Purchaser shall promptly notify Seller with respect thereto), Seller shall take prompt action to prevent such damage or injury and shall promptly notify Purchaser. Such action may include disconnecting and removing all or a portion of the System, or suspending the supply of Energy to Purchaser.

3.5 Phone/Data Line. In order to allow Seller to provide Purchaser and third parties with access to real-time online data related to the measurement of System performance, Purchaser shall permit Seller reasonable access to Purchaser's broadband internet connection located at the Premises. If Purchaser does not maintain such internet connection on the

Premises, Purchaser shall reasonably cooperate with Seller to allow Provider to install and maintain a broadband internet connection at the Premises.

3.6 Assistance with Permits and Licenses. Upon Seller's request, Purchaser shall assist and cooperate with Seller, at Seller's cost, to acquire and maintain approvals, permits, and authorizations including but not limited to those permits and approvals listed in Exhibit F or to facilitate Seller's compliance with all applicable laws and regulations related to the construction, installation, operation, maintenance, and repair of the System, including providing any building owner or occupant authorizations, and signing any applications for permits, local utility grid interconnection applications, and rebate applications as are required by law to be signed by Purchaser. Purchaser shall also deliver to Seller copies of any necessary approvals, permits, rebates, or other financial incentives that are required by law in the name or physical control of Purchaser.

3.7 Commercial Operation Date. Seller shall deliver notice to Purchaser of the occurrence of the Commercial Operation Date, which shall be the earlier of [[2/3/17]] or the date on which all of the following shall have occurred: (a) Seller shall have certified to Purchaser that the System is substantially complete and capable of regular commercial operation in accordance with good practices and manufacturer guidelines for all material components and that all performance testing has been satisfactorily completed, (b) all permits and licenses required to be obtained in connection with the operation of the System shall have been obtained and be in full force and effect and (c) Seller shall have entered into an Interconnection Agreement with the Utility and completed all interconnection requirements.

3.8 Early Termination. In the event that the Commercial Operation Date has not occurred by three hundred and sixty five (365) days from the Effective Date of this Agreement, Purchaser may terminate this Agreement upon thirty (30) days' written notice to Seller delivered at any time prior to the actual Commercial Operation Date; provided, however, that the foregoing date shall be extended on a day-for-day basis for up to three hundred and sixty five (365) days for any Force Majeure occurring after the Effective Date and prior to the Commercial Operation Date, or for any delay attributable to Purchaser, including, without limitation, actions by Purchaser which restrict Seller's access to the Premises.

3.9 Seller's Taxes. Subject to Section 3.10, Seller is solely responsible for all income, gross receipts, ad valorem, personal property, or other similar taxes and any and all franchise fees or similar fees relating to Seller's ownership of the System.

3.10 Purchaser's Taxes. Purchaser is responsible for paying all taxes, charges, levies, and assessments against the Premises. Purchaser is also responsible for paying all sales, use, and other taxes, and any and all franchise fees or similar fees assessed against Purchaser as a result of Purchaser's purchase of the Energy and, in the event that Purchaser exercises the Purchase Option, its purchase and ownership of the System, which fees are not otherwise the obligation of Seller.

3.11 Notice of Damage. Purchaser shall promptly notify Seller of any physical conditions or other circumstances of which Purchaser becomes aware that indicate there has been or might be damage to or loss of the use of the System or that could reasonably be expected to

adversely affect the System.

#### 4. PAYMENT AND METERING.

4.1 Consideration for Energy Delivered. As consideration for the delivery of Energy by Seller, Purchaser shall pay for Energy delivered hereunder at the applicable Energy Price.

4.2 Invoicing. Seller shall invoice Purchaser for Energy monthly. Seller shall deliver each invoice within ten (10) Business Days after the end of each monthly billing period. Each invoice shall be levelized and calculated based on the amount of Energy expected to be generated over the course of a year multiplied by the then-applicable Energy Price and divided by twelve (12). The amount due shall be prorated for any partial month during the Contract Term. Purchaser shall pay the amount due to Seller within fifteen (15) Business Days after receipt of each invoice. Notwithstanding the foregoing, in the event that Purchaser elects to renew this Agreement pursuant to Section 8.3, Purchaser shall pay the Renewal Rate for Energy provided during such renewal period.

4.3 True-Up. Annually, but no later than fifteen (15) Business Days after the end of each calendar year, Seller shall deliver to Purchaser a statement that shall set out the amount of Energy delivered in kWh during the past calendar year, the then-applicable Energy Price, and the total amount paid to Seller during that calendar year. Such statement shall include sufficient details so that Purchaser can reasonably confirm the accuracy of the statement including, among other details, beginning and ending meter readings. The statement shall describe the amount due from Purchaser to Seller for any overproduction of Energy versus that estimate used in the calculation of the levelized repayment schedule, as described in Section 4.2 above, or the amount due from Seller to Purchaser for any underproduction of Energy versus that estimate. Purchaser shall pay the amount due to Seller, or Seller shall pay the amount due to Purchaser, within fifteen (15) Business Days after receipt of each statement. If Purchaser does not pay Seller the amount due within fifteen (15) Business Days after receipt of each statement, such amount shall accrue interest at the Interest Rate from the date due to the date paid.

4.4 Shutdown Requested by Purchaser. Except as set forth in this Agreement, during the term of this Agreement, Purchaser shall not take any action, or refrain from taking any action required by this Agreement, with the purpose or effect of preventing Seller from operating the System to generate Energy, delivering the Energy to the delivery point, and obtaining the Environmental Incentives. Notwithstanding the foregoing, at the request of Purchaser by reasonable prior written notice, Seller shall curtail Energy deliveries if required by the Purchaser in the ordinary course of business in the use of the Premises (a "Maintenance Shutdown"), and Seller shall, if requested by Purchaser and at Purchaser's expense, move all or such part of the System as may be required to complete such maintenance or repairs. Purchaser will be allotted the annual number of kilowatt hours of curtailed generation capacity for Maintenance Shutdowns (the "Maintenance Shutdown Allotment") set forth in Exhibit G. Any unused Maintenance Shutdown Allotment shall roll over and accumulate for a maximum of the latest five (5) Contract Years on an ongoing basis. In the event that Purchaser requests or causes a Maintenance Shutdown that would reduce the generation of Energy by more than the Maintenance Shutdown Allotment, and such Maintenance Shutdown is not due to a breach by Seller or a Force Majeure Event,

Purchaser shall be responsible to Seller for the amount of Energy revenue, plus the value of the Environmental Incentives (in each case, calculated by Seller in a commercially reasonable manner) that are foregone as a result of a Maintenance Shutdown lasting longer than permitted by the Maintenance Shutdown Allotment. Seller and Purchaser shall reasonably cooperate to mitigate the damages suffered as a result of any excess maintenance shutdowns, including, if feasible, by a partial rather than complete shutdown of the system and/or the continued delivery of power to the local utility in order to generate Environmental Incentives. In no case shall Purchaser be required to pay damages in excess of the Purchase Price (as hereinafter defined), in each case as in effect at the commencement of such maintenance shutdown. Nothing in this Agreement shall prevent Purchaser or its first responders from shutting down the System in the event of an emergency, and Seller shall install and at all times maintain all emergency shutdown or disconnect equipment and signage as may be required by the Purchaser's local electric utility, or otherwise required as a condition of any of the required consents, approvals, permits, licenses and authorizations from relevant Governmental Authorities, utility personnel, and the Premises' owners.

4.5 Disputed Amounts. A Party may in good faith dispute the correctness of any statement (or any adjustment to any statement) under this Agreement at any time within six (6) months following the delivery of the statement (or statement adjustment). In the event that either Party disputes any statement or statement adjustment, such Party shall nonetheless pay the full amount of the applicable statement or statement adjustment (except any portions thereof that are reasonably believed to be inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as expressly provided otherwise elsewhere in this Agreement, and to give notice of the objection to the other Party. Any required payment will be made within fifteen (15) Business Days after resolution of the applicable dispute, together with interest accrued at the Interest Rate from the due date to the date paid.

4.6 Metering of Delivery. Seller shall measure the amount of Energy supplied to Purchaser at the Delivery Point using a commercially available, revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. Purchaser shall cooperate with Seller to enable Seller to have reasonable access to the meter as needed to inspect, repair, and maintain such meter. At Seller's option, the meter may have standard industry telemetry and/or automated meter reading capabilities to allow Seller to read the meter remotely. If Seller elects to install telemetry allowing for remote reading, Purchaser shall allow for the installation of necessary communication lines and shall reasonably cooperate in providing access for such installation. The meter shall be kept under seal, such seal to be broken only when the meter is to be tested, adjusted, modified, or relocated. In the event that either Party breaks a seal, such Party shall notify the other Party as soon as practicable. All Meters shall be installed consistent with all requirements and good practices specified by the Utility and the regional transmission operator, ISO New England.

4.7 Meter Verification. Annually, or earlier if Seller has reason to believe there may be a meter malfunction, Seller shall test the meter and provide copies of such tests to Purchaser. The tests shall be conducted by a qualified independent third party. Seller shall notify Purchaser seven (7) days in advance of each such test, and shall permit Purchaser to be present during such tests. If a meter is inaccurate, Seller shall promptly cause the meter to be repaired or replaced. If



a meter is inaccurate by more than two percent (2%) and the duration of such inaccuracy is known, then prior statements shall be adjusted accordingly. If a meter is inaccurate by more than two percent (2%) and it is not known when the meter inaccuracy commenced, then prior statements shall be adjusted for the amount of the inaccuracy on the basis that the inaccuracy persisted during one-half of the period since the prior meter test.

Once per calendar year and after reasonable written notice, Purchaser shall have the right to audit all such meter data and witness testing of the meters and the System's output at a mutually agreed to date and time, and any such audit shall be at Purchaser's sole cost and expense. Purchaser shall have a right of access to all meters at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations.

4.8 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all statements under this Agreement, for a period of at least two (2) years, and Seller shall grant Purchaser reasonable access to those books, records, and data at the principal place of business of Seller. Purchaser may examine such books and records relating to transactions under, and administration of, this Agreement, at any time during the period the records are required to be maintained, upon request with reasonable notice and during normal business hours.

4.9 Change in Law. The Parties acknowledge and agree that the Energy Price is based on assumptions related to the availability to the Provider of the Environmental Incentives. In the event of the elimination or alteration of one of more Environmental Incentives or any other change in law that results in a material adverse economic impact on Seller in respect to this Agreement, the Parties shall work in good faith to amend this Agreement within thirty (30) Business Days after such elimination or alteration as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties. If the Parties fail to enter into such an amendment by the end of such thirty (30) Business Day period, Seller may, but shall not be required to, terminate this Agreement. Following such termination, neither Party shall bear any liability to the other Party, and Seller shall remove the System from the Premises within one hundred eighty (180) days of such termination.

## 5. **OPTION TO PURCHASE SYSTEM.**

5.1 Grant of Purchase Option. Seller hereby grants to Purchaser the right and option to purchase all of the Seller's right, title, and interest in and to the System on the terms set forth herein ("Purchase Option"). Purchaser may exercise the Purchase Option on the fifth (5th) anniversary of the Commercial Operation Date and on each successive anniversary of the Commercial Operation Date during the remainder of Contract Term, or simultaneously with the termination of this Agreement pursuant to Section 10.2 (collectively, the "Purchase Option Dates"), provided that no Purchaser Event of Default, or any event which with the passage of time will become a Purchaser Event of Default, has then occurred and is ongoing.

5.2 Determination of Purchase Price. Purchaser may, at any time within thirty (30) days following each Purchase Option Date, request a determination of the purchase price under the Purchase Option (the "Purchase Price"). The Parties shall attempt to determine the Purchase Price by mutual agreement. If the Parties have not agreed on the Purchase Price within thirty

(30) days after Purchaser's request for a Purchase Price determination, then the Purchase Price shall be the fair market value of the System, as determined by an independent appraiser retained by the Parties (the "Independent Appraiser"), provided that the Purchase Price shall in no event be less than the applicable amount set forth on Exhibit E. The Independent Appraiser shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the System, and who specifically has prior experience valuing solar energy generating facilities. The Independent Appraiser shall be reasonably acceptable to Seller. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or adviser to, either of the Parties or their respective affiliates. The fair market value assessment of the System shall consider, among other things, the income and savings associated with the System for the remaining portion of the Contract Term, and the System's past and projected performance. The Independent Appraiser shall make a determination of the Purchase Price within thirty (30) days of appointment (the "Price Determination"). Upon making the Price Determination, the Independent Appraiser shall provide a written notice thereof to both Seller and Purchaser, along with all supporting documentation detailing the method of calculation of the Purchase Price. Except in the event of fraud or manifest error, the Price Determination shall be a final and binding determination of the fair market value. If Purchaser wishes to exercise the Purchase Option following the Price Determination, it shall deliver an exercise notice to Seller within ten (10) days of receipt of the Price Determination (the "Exercise Period"). Any such exercise notice shall be irrevocable once delivered. If Purchaser does not exercise the Purchase Option during the Exercise Period, then the Price Determination shall be null and void, and Purchaser may not request a new determination of the Purchase Price until the next Purchase Option Date. Each Price Determination by an Independent Appraiser shall be at Purchaser's expense, provided that in the event Purchaser exercises the Purchase Option, the applicable Price Determination shall be at Seller's expense.

5.3 Terms and Date of System Purchase. The Parties shall consummate the sale of the System to Purchaser no later than forty-five (45) days following Purchaser's exercise of the Purchase Option. On the effective date of such sale (the "Transfer Date"), (a) Seller shall surrender and transfer to Purchaser all of Seller's right, title, and interest in and to the System and shall retain all liabilities arising from or relating to the System that arose prior to the Transfer Date; (b) Purchaser shall pay the Purchase Price to Seller in readily available funds, and shall assume all liabilities arising from or relating to the System as of and after the Transfer Date; and (c) both the Seller and the Purchaser shall (i) execute and deliver a bill of sale and assignment of contract rights, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System in Purchaser, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third-party consents and approvals, and such similar documents as may be reasonably necessary to complete and conclude the sale of the System to Purchaser. The purchase and sale of the System shall be on an "as-is, where-is" basis, and Seller shall not be required to make any warranties or representations with regard to the System, but Seller shall, to the extent reasonably possible, transfer or assign to Purchaser all manufacturer and third-party warranties with respect to the System or any part thereof.

5.4 Interconnection Agreement. Notwithstanding Section 1.7 of any Interconnection Agreement signed between Seller, Purchaser, and Utility (the "Interconnection Agreement"), Seller will forego all of its rights and responsibilities under such Interconnection Agreement, or agree in writing to a termination thereof, should Purchaser elect to exercise the Purchase Option.

## 6. TITLE AND RISK OF LOSS.

6.1 Title. Seller shall at all times retain title to and be the legal and beneficial owner of the System, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part or fixture of the Premises. Seller may file one or more precautionary financing statements in jurisdictions it deems appropriate with respect to the System in order to protect its rights in the System.

6.2 Risk of Loss. Seller shall bear the risk of loss for the System, except to the extent caused by the breach by Purchaser of its obligations under this Agreement, the Site Lease or the negligence or intentional misconduct of Purchaser or its invitees.

6.3 System Casualty. Upon the total damage, destruction, or loss of the System, or, in the reasonable opinion of Seller's insurance provider, the System is determined to have experienced a constructive total loss, Seller shall have the option, in its sole discretion, to repair or replace the System or terminate this Agreement. Seller shall notify Purchaser in writing of its election within thirty (30) days after the date of the damage to the System. Seller shall under all circumstances be entitled to all insurance proceeds with respect to the System. If Seller elects to repair or replace the System, Seller shall undertake such repair or replacement as quickly as practicable. If Seller elects to terminate this Agreement, the termination shall be effective immediately upon delivery of the notice under this Section 6.3.

## 7. FORCE MAJEURE.

7.1 Force Majeure. To the extent either Party is prevented by an event of Force Majeure from performing its obligations under this Agreement, such Party shall be excused from the performance of its obligations under this Agreement (other than the obligation to make payments when due). The Party claiming Force Majeure shall use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-claiming Party shall not be required to perform its obligations to the claiming Party corresponding to the obligations of the claiming Party excused by Force Majeure during the pendency of the Force Majeure. Notwithstanding anything in this Section 7.1 to the contrary, no payment obligation of Purchaser under this Agreement for amounts due and owing for Energy already provided may be excused or delayed as the result of Force Majeure. In case a Force Majeure event continues for at least eighteen (18) months, then either Party may terminate this Agreement by written notice to the other.

7.2 Notice. In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party suffering the event of Force Majeure shall, as soon as practicable, notify the other Party in writing of the nature, cause, date of commencement thereof and the

anticipated extent of any delay or interruption in performance; provided, however, that a Party's failure to give timely notice shall not affect such Party's ability to assert Force Majeure unless the delay in giving notice prejudices the other Party.

## 8. ADDITIONAL COVENANTS.

8.1 Liens. Purchaser 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 System or any portion thereof. If Purchaser breaches its obligations under this Section 8.1, it shall promptly notify Seller in writing, shall promptly cause any lien to be discharged and released of record without cost to Seller, and shall indemnify Seller against all claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred in discharging and releasing such lien.

8.2 Extension of Term. Upon prior written notice to Seller at least one hundred eighty (180) days prior to the expiration of this Agreement, Purchaser shall have the option to renew the term of this Agreement for one (1) additional five (5) year period at the Renewal Rate escalated annually at a rate mutually agreed to by the parties.

8.3 Performance Assurance; Downgrade Event. If Seller at any time has reasonable grounds to believe that Purchaser's or Purchaser's Performance Assurance provider's creditworthiness or performance under this Agreement has or will become unsatisfactory, or if Purchaser or Purchaser's Performance Assurance provider experiences a Downgrade Event, then Seller may by written notice require Purchaser to provide Performance Assurance within three (3) Business Days. Purchaser shall obtain and maintain such Performance Assurance, unless otherwise agreed upon by Seller in writing.

## 9. REPRESENTATIONS AND WARRANTIES.

9.1 Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller that:

9.1.1, Purchaser has the requisite corporate, partnership or limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Purchaser;

9.1.2 This Agreement constitutes Purchaser's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

9.1.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Purchaser that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Purchaser to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Purchaser;

9.1.4 The audited financial statements of Purchaser dated the past two fiscal years, and the related audited statements of income shareholders' equity and cash flows for the fiscal years ended on such dates and the unaudited interim financial statements of Purchaser (i) were prepared in accordance with generally accepted accounting principles consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein; and (ii) present fairly the financial condition of Purchaser as of the dates thereof and results of its operations for the periods covered thereby. Purchaser further represents and warrants to Seller that since the date of the most recent of the above-referenced audited financial statements, there has been no material adverse change in Purchaser's financial condition, business, operations or prospects; and

9.1.5 Notwithstanding Section 3.1.2 of the Interconnection Agreement, the Purchaser shall not terminate such Interconnection Agreement without prior written approval from Seller.

9.2 Representations and Warranties of Seller. Seller represents and warrants to Purchaser that:

9.2.1 Seller has the requisite corporate, partnership or limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Seller;

9.2.2 This Agreement constitutes Seller's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

9.2.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Seller that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Seller to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Seller;

9.2.4 Neither the System nor any of Seller's services provided to Purchaser pursuant to this Agreement infringe on any third party's intellectual property or other proprietary rights; and

9.2.5 Notwithstanding Section 3.1.2 of the Interconnection Agreement, the Seller shall not terminate such Interconnection Agreement without prior written approval from Purchaser.

## **10. DEFAULTS/REMEDIES.**

**10.1 Seller Event of Default.** Each of the following events shall constitute a "Seller Event of Default":

10.1.1 Seller fails to pay to Purchaser any amount when due under this Agreement and such breach remains uncured for fifteen (15) Business Days following notice of such breach to Seller;

10.1.2 (i) Seller commences a voluntary case under any bankruptcy law; (ii) Seller fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Seller in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Seller remains undismissed or undischarged for a period of sixty (60) days; and

10.1.3 Seller breaches any other material term of this Agreement and (i) if such breach is capable of being cured within thirty (30) days after Purchaser's notice of such breach, Seller has failed to cure the breach within such thirty (30) day period, or (ii) if Seller has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Seller has failed to cure the breach within a further one hundred fifty (150) day period (such aggregate period not to exceed one hundred eighty (180) days from the date of Purchaser's notice).

**10.2 Purchaser's Remedies.** If a Seller Event of Default has occurred and is continuing, Purchaser may terminate this Agreement by written notice to Seller following the expiration of the applicable cure period, and may exercise any other remedy it may have at law or equity, including, in the event such Seller Event of Default occurs and is continuing after the fifth (5th) anniversary of the Commercial Operation Date, exercising the Purchase Option. If the Purchaser does not exercise the Purchase Option pursuant to a Seller Event of Default, the Seller must remove the System from the Premises with sixty (60) days and restore the Premises to its condition prior to installation excluding normal wear and tear.

**10.3 Purchaser Event of Default.** Each of the following events shall constitute a "Purchaser Event of Default":

10.3.1 Purchaser fails to pay to Seller any amount when due under this Agreement and such breach remains uncured for fifteen (15) Business Days following notice of such breach to Purchaser;

10.3.2 (i) Purchaser commences a voluntary case under any bankruptcy law; (ii) Purchaser fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Purchaser in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Purchaser remains undismissed or undischarged for a period of sixty (60) days;

10.3.3 Owner breaches any of its obligations under the Site Lease;

10.3.4 Purchaser ceases to conduct business at the Premises;

10.3.5 Purchaser (i) refuses to execute any document required for Seller to obtain any Environmental Attributes or Environmental Incentives related to the System, or (ii) causes any material change to the condition of the Premises that has a material adverse effect on the System; and

10.3.6 Purchaser breaches any other material term of this Agreement and such breach remains uncured for thirty (30) days following notice of such breach to Purchaser.

10.4 Seller's Remedies. If a Purchaser Event of Default has occurred and is continuing, Seller may terminate this Agreement by written notice to Purchaser following the expiration of the applicable cure period. Seller may also exercise any other remedy it may have at law or equity, including recovering from Purchaser all resulting damages, which damages shall include, but not be limited to, projected payments for Energy generated for the remainder of the Contract Term; the cost of removing the System from the Premises; any loss or damage to Seller due to lost or recaptured Environmental Attributes or Environmental Incentives, including, without limitation, lost revenue from the sale of Environmental Attributes to third parties (including any damages due to the early termination of any agreement for such sale), and the recapture of the investment tax credit under Section 48 of the Internal Revenue Code; the grant in lieu of tax credits pursuant to Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, and accelerated depreciation for the System; and all other amounts of any nature due under this Agreement (collectively, the "PPA Damages"). Pending Purchaser's payment of the PPA Damages, Seller may remain on the Premises and sell Energy and Environmental Attributes produced by the System to any third party.

10.5 Effect of Termination of Agreement. Upon the termination of this Agreement, any amounts then owing by a Party to the other Party shall become immediately due and payable and the then future obligations of Purchaser and Seller under this Agreement shall be terminated. Such termination shall not relieve either Party from obligations accrued prior to the effective date of termination or expiration.

10.6 Waiver of Consequential Damages. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS AGREEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE PPA DAMAGES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

10.7 Limitation of Liability.

10.7.1 SELLER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED ONE HUNDRED THOUSAND DOLLARS (\$100,000).

10.7.2 PURCHASER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT (WHETHER IN CONTRACT, WARRANTY, INDEMNITY, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) SHALL IN NO EVENT EXCEED TWO HUNDRED AND TEN THOUSAND DOLLARS (\$210,000).

11. FINANCING ACCOMMODATIONS.

11.1 Purchaser Acknowledgment. Purchaser acknowledges that Seller may finance the System and that Seller's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a security interest in the System. In order to facilitate such financing, and with respect to any financing Seller of which Seller has notified Purchaser in writing (each a "Financing Party"), Purchaser agrees as follows:

11.1.1 Consent to Collateral Assignment. Seller shall have the right to assign this Agreement as collateral for financing or refinancing of the System, and Purchaser hereby consents to the collateral assignment by Seller to any Financing Party of Seller's right, title, and interest in and to this Agreement.

11.1.2 Financing Party's Rights Following Default. Notwithstanding any contrary term of this Agreement:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty, or obligation required of Seller hereunder or cause to be cured any default or event of default of Seller in the time and manner provided by the terms of this Agreement. Nothing herein requires Financing Party to cure any default of Seller (unless Financing Party has succeeded to Seller's interests) to perform any act, duty, or obligation of Seller, but Purchaser hereby gives Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Seller to Financing Party, Financing Party shall give notice to Purchaser of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a Seller Event of Default.



(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Purchaser shall enter into a new power purchase agreement with Financing Party or its assignee on substantially the same terms as this Agreement.

11.1.3 Financing Party Cure Rights. Purchaser shall not exercise any right to terminate or suspend this Agreement unless Purchaser has given prior written notice to each Financing Party of which Purchaser has notice. Purchaser's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party shall have the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition; provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Purchaser's and Seller's obligations under this Agreement shall otherwise remain in effect, and Purchaser and Seller shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

11.1.4 Continuation Following Cure. If Financing Party or its assignee acquires title to or control of Seller's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 11.1.3, then this Agreement shall continue in full force and effect.

11.2 Notice of Defaults and Events of Default. Purchaser agrees to deliver to each Financing Party a copy of all notices that Purchaser delivers to Seller pursuant to this Agreement.

12. **NOTICES**. Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Seller:                    CEFIA Holdings LLC  
845 Brook Street  
Rocky Hill, CT 06067  
Attention: General Counsel

To Purchaser:            Town of Fairfield  
Sullivan Independence Hall, Second Floor  
725 Old Post Road  
Fairfield, CT 06824  
Attention: First Selectman

13. **GOVERNING LAW; VENUE.**

13.1 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Connecticut, without regard to its conflict of laws principles.

13.2 VENUE. PURCHASER AND SELLER EACH HEREBY IRREVOCABLY SUBMITS IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN HARTFORD COUNTY, CONNECTICUT AND WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION THAT IT MAY HAVE UNDER THE LAWS OF THE UNITED STATES OR OF ANY STATE. PURCHASER AND SELLER EACH WAIVE ANY OBJECTION THAT IT MAY HAVE (INCLUDING, WITHOUT LIMITATION, ANY OBJECTION OF THE LAYING OF VENUE OR BASED ON FORUM NON CONVENIENS) TO THE LOCATION OF THE COURT IN WHICH ANY PROCEEDING IS COMMENCED.

#### 14. INDEMNIFICATION:

14.1 Seller's Indemnity to Purchaser. Seller shall indemnify, defend, and hold harmless Purchaser (including Purchaser's permitted successors and assigns) and Purchaser's subsidiaries, directors, officers, members, shareholders, and employees (collectively, "Purchaser Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Purchaser Indemnified Parties arising from or relating to (i) Seller's breach of this Agreement, or (ii) Seller's negligence or willful misconduct. Seller's indemnification obligations under this Section 14.1 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Purchaser Indemnified Party.

14.2 Purchaser's Indemnity to Seller. Purchaser shall indemnify, defend, and hold harmless Seller (including Seller's permitted successors and assigns) and Seller's subsidiaries, directors, officers, members, shareholders, and employees (collectively, "Seller Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Seller Indemnified Parties arising from or relating to (i) Purchaser's breach of this Agreement, or (ii) Purchaser's negligence or willful misconduct. Purchaser's indemnification obligations under this Section 14.2 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Seller Indemnified Party.

#### 15. INSURANCE.

15.1 Insurance Required. Each Party shall maintain in full force and effect throughout the Contract Term insurance coverage in the amounts and types set forth on Exhibit C. Each policy of insurance maintained by Purchaser shall (a) name Seller as loss payee (to the extent covering risk of loss or damage to the Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to Seller. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

15.2 Waiver of Subrogation. Each policy of insurance required hereunder shall provide for a waiver of subrogation rights against the other Party, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy.

15.3 No Waiver of Obligations. The provisions of this Agreement shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

## 16. CONFIDENTIAL INFORMATION.

16.1 Confidentiality. Neither Party (the “Receiving Party”) shall use for any purpose other than performing its obligations under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the “Disclosing Party”), any confidential information of the Disclosing Party. Confidential information includes, without limitation, this Agreement and exhibits hereto; all information or materials prepared in connection with the System; drawings; specifications; techniques; models; data; documentation; Purchaser, supplier, or personnel names and other information related to Purchasers, suppliers, or personnel; pricing policies and financial information; and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets. Confidential information does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; or (c) information obtained by the Receiving Party from a third party who did not receive same, directly or indirectly, from the Disclosing Party. The Receiving Party shall use the higher of the standard of care that the Receiving Party uses to preserve its own confidential information or a reasonable standard of care to prevent unauthorized use or disclosure of such confidential information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed; (ii) as otherwise required by law; (iii) as advisable or required in connection with any government or regulatory filings, including, without limitation, filings with any regulating authorities covering the relevant financial markets; (iv) to its attorneys, accountants, financial advisors, or other agents, in each case bound by confidentiality obligations; (v) to banks, investors, and other financing sources and their advisors, in each case if any such Person has agreed to abide by the terms of this Section 16.1; (vi) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by the same or similar confidentiality obligations; or (vii) to any Governmental Authority in connection with any Environmental Incentive. If a Receiving Party believes that it will be compelled by a court or other Governmental Authority to disclose Confidential Information of the Disclosing Party, it shall give the Disclosing Party prompt written notice so that the Disclosing Party may determine whether to take steps to oppose such disclosure.

16.2 Irreparable Injury; Remedies. Purchaser and Seller each agree that disclosing Confidential Information of the other Party in violation of the terms of this Article 16 may cause

irreparable harm, and that, notwithstanding Section 10.5, the harmed Party may immediately seek any and all remedies available to it at law or in equity, including, but not limited to, injunctive relief from a court of competent jurisdiction.

## 17. MISCELLANEOUS.

17.1 Assignments. Neither Party shall have the right to assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Seller may assign any of its rights, duties, or obligations under this Agreement, without the consent of Purchaser, (i) to any of its affiliates, (ii) to any third party in connection with a financing transaction, or (iii) to any purchaser of the System.

17.2 Entire Agreement. This Agreement and the Site Lease represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

17.3 Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.

17.4 No Partnership or Joint Venture. Seller and Seller's agents, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Purchaser. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

17.5 Headings, Exhibits. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement. Any Exhibits referenced within and attached to this Agreement, including any attachments to the Exhibits, shall be a part of this Agreement and are incorporate by reference herein.

17.6 Remedies Cumulative; Attorneys' Fees. No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law 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. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

17.7 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. Any such waiver must be in a writing executed by the Party making such waiver.

17.8 Severability. If any part, term, or provisions of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement and shall not render this Agreement unenforceable as a whole. Instead, the part of the Agreement found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

17.9 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Seller to dedicate the System to public use or subject itself to regulation as a “public utility” (as such term may be defined under any applicable law).

17.10 Service Contract. The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract for the sale to Purchaser of energy produced at an alternative energy facility.

17.11 Forward Contract. The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

17.12 Publicity. The Parties agree that each may, from time to time, issue press releases regarding the System, provided, however that neither Party shall issue a press release regarding the System without the prior consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Parties shall cooperate with each other in connection with the issuance of such press releases. Purchaser shall not make claims of using solar energy at the Premises. Purchaser may publicize that it is serving as a host for the System and display photographs of the System in its advertising and promotional materials, provided that such materials shall identify Seller as the owner and developer of the System and shall be consistent with Section 2.3.

17.13 Counterparts and Facsimile Signatures. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (“.PDF”) signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

17.14 Further Assurances.

17.14.1 Additional Documents. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this section.

17.14.2 Certificates. From time to time, Purchaser shall provide within fifteen (15) Business Days after receipt of a written request from Seller (i) a lien waiver from any party purporting to have a lien, security interest, or other encumbrance on the Premises,

confirming that it has no interest in the System, or (ii) an estoppel certificate attesting, to the knowledge of Purchaser, of Seller's compliance with the terms of this Agreement or detailing any known issues of noncompliance, and making such other representations, warranties, and accommodations reasonably requested by the recipient of the estoppel certificate

17.14.3. **Opinion:** Upon the receipt of a written request from Seller, Purchaser shall deliver an opinion of counsel, in form and substance satisfactory to Seller, confirming (i) the enforceability of this Agreement and the Site Lease against Buyer, and (ii) the accuracy of the representations and warranties of Purchaser set forth in Section 9.1 of this Agreement and Section 6.1 of the Site Lease.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Solar Power Purchase Agreement to be duly executed and delivered as of the Effective Date.

**SELLER**

CEFIA Holdings LLC

By: \_\_\_\_\_  
Name:  
Title:

**PURCHASER**

The Town of Fairfield

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**DEFINITIONS**

**"Agreement"** has the meaning set forth in the Preamble.

**"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

**"Commercial Operation Date"** means the date when the System is "placed in service" for purposes of Section 48 of the Internal Revenue Code.

**"Confidential Information"** has the meaning set forth in Section 16.1.

**"Contract Term"** has the meaning set forth in Section 2.2.

**"Contract Year"** means the twelve (12) month period commencing on the Commercial Operation Date, and each consecutive twelve (12) month period thereafter during the Contract Term.

**"Delivery Point"** means the point of interconnection between the System and the Premises' internal electrical system.

**"Downgrade Event"** means Purchaser at any time (a) if rated by one of the following rating agencies, is rated less than (i) Baa3 by Moody's Investors Service, Inc. (or its successor), or (ii) BBB- by Standard and Poor's Rating Services, a division of McGraw-Hill (or its successor), or (iii) "investment grade" by any other nationally recognized rating agency, or (b) fails to maintain Performance Assurance.

**"Effective Date"** has the meaning set forth in the Preamble.

**"Energy"** means electrical energy that is generated by the System, expressed in kWh.

**"Energy Price"** means, for any Contract Year, the applicable amount set forth on Exhibit D.

**"Environmental Attributes"** means any and all environmental benefits, air quality credits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to energy generation by a renewable fuel source and its displacement of energy generation by conventional, nonrenewable, and/or carbon-based fuel sources. Environmental Attributes include, but are not limited to, (1) any benefit accruing from the renewable nature of the generation's motive source; (2) any avoided emissions of pollutants to the air, soil, or water (such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO), and other pollutants other than those that are regulated pursuant to state or federal law); (3) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (4) any property rights that may



exist with respect to the foregoing attributes howsoever entitled; (5) any green tags, renewable energy credits or similar credits, including RECs described in Conn. Gen. Stat. § 16-245a et seq. (“RECs”); and (6) any reporting rights to these avoided emissions, including, but not limited to, green tag or REC reporting rights. Environmental Attributes do not include (i) any energy, capacity, reliability, or other power attributes, (ii) Environmental Incentives, or (iii) emission reduction credits encumbered or used for compliance with local, state, or federal operating and/or air quality permits.

“Environmental Incentives” means any and all financial incentives, from whatever source, related to the construction, ownership, or operation of the System. Environmental Incentives include, but are not limited to, (i) federal, state, or local tax credits; (ii) any other financial incentives in the form of credits, reductions, or allowances that are applicable to a local, state, or federal income taxation obligation; and (iii) other grants, rebates, or subsidies, including utility incentive programs, and any incentive provided through the State of Connecticut Low Emission Renewable Energy Credit (“LREC”) and Zero Emission Renewable Energy Credit (“ZREC”) Programs. Environmental Incentives do not include Environmental Attributes.

“Exercise Period” has the meaning set forth in Section 5.2.

“Financing Party” has the meaning set forth in Section 11.1.

“Force Majeure” means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of and without the fault or negligence of, the Party relying thereon as justification for such delay, nonperformance, or noncompliance, which includes, without limitation, an act of God or the elements, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood, volcanic eruption or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance, or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure.

“Governmental Authorities” means the United States of America and any political subdivision thereof and any agency, department, commission, board, court, or instrumentality thereof.

“Independent Appraiser” has the meaning set forth in Section 5.2.

“Interest Rate” means an annual rate equal to (a) the rate published in *The Wall Street Journal* as the “Prime Rate” (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due; plus (b) five percentage points (5%); provided, however, that in no event shall the Interest Rate exceed the maximum interest rate permitted by applicable law.

“kWh” means kilowatt-hours.

"Letter of Credit" means one or more irrevocable, transferable standby letters of credit issued by either a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating of at least "A-" from S&P or "A3" from Moody's, in a form acceptable to Seller.

"Net Metering Rules" means the rules established pursuant to Conn. Gen. Stat. § 16-243h or Conn. Gen. Stat. § 16-244u.

"Owner" has the meaning set forth in the Preamble.

"Party" and "Parties" have the meanings set forth in the Preamble.

"Performance Assurance" means collateral in an amount as reasonably determined by Seller and in a form (e.g., cash, Letter(s) of Credit, guaranty, or other security or credit assurance) reasonably acceptable to Seller.

"Person" means any individual, corporation (including, without limitation, any non-stock or non-profit corporation), limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, or governmental body.

"PPA Damages" has the meaning set forth in Section 10.4.

"Premises" means all the real property and improvements commonly known as [Public Works Garage, 357 Veres Street, Fairfield, CT 06824], including without limitation, the Project Site, but not the System.

"Price Determination" has the meaning set forth in Section 5.2.

"Prudent Operating Practice" means the practices, methods, and standards of professional care, skill, and diligence engaged in or approved by a significant portion of the electric power industry for solar energy facilities of similar size, type, and design as the System that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with applicable law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition.

"Purchase Option" has the meaning set forth in Section 5.1.

"Purchase Price" has the meaning set forth in Section 5.2.

"Purchase Option Dates" has the meaning set forth in Section 5.1.

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser Event of Default" has the meaning set forth in Section 10.3.

"Purchaser Indemnified Parties" has the meaning set forth in Section 14.1.

"Renewal Rate" shall mean the fair market price for electricity generated by solar photovoltaic systems as determined by agreement of the Parties or through the appraisal process applicable to the Purchase Option contained in this Agreement.

"Seller" has the meaning set forth in the Preamble.

"Seller Event of Default" has the meaning set forth in Section 10.1.

"Seller Indemnified Parties" has the meaning set forth in Section 14.2.

"Site Lease" has the meaning set forth in the Recitals.

"System" means the solar energy generating system described in Exhibit B.

"Transfer Date" has the meaning set forth in Section 5.3.

"Utility" means the United Illuminating Company.

**EXHIBIT B**

**DESCRIPTION OF THE SYSTEM**

DC System Size: 43.9 kW

AC System Size: 36.0 kW

Estimated Annual Energy

Output: 55.71 MWh

Modules: Canadian Solar CS6X-325P (325W) or similar

Total # of Panels: 135

Inverters: Fronius Symo 12.0-3 208 or similar

Total # of Inverters: 3

Optimizers: [n/a]

Total # of Optimizers: [n/a]

Racking: [Panel Claw Polar Bear III]

## EXHIBIT C

### INSURANCE REQUIREMENTS

(a) Seller shall obtain and maintain the following insurance policies:

(i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System, including products and completed operations and personal injury insurance, as well as Automobile Insurance, of not less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate. Purchaser shall be named as an additional insured under this liability insurance, provided however that Seller shall in no event be obligated to repair or replace Purchaser's buildings or Premises. Seller, if it has employees, shall also maintain at all times during the term of this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Agreement and upon Purchaser's request annually thereafter, and so long as Seller elects not to self-insure, Seller shall deliver to Purchaser certificates of insurance evidencing such coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Purchaser, and shall include provisions regarding waiver of subrogation;

(ii) Seller shall cause to be provided and maintained, at its sole cost, "all-risk" property insurance covering the System during all periods that Seller is the beneficial owner of such System. Such insurance shall be primary coverage without right of contribution from any insurance of Seller;

(iii) Seller may satisfy the insurance requirements contained in this Agreement through any combination of primary and/or excess coverage; and

(iv) Seller may elect to self-insure any or all of the insurance requirements contained in this Agreement.

(b) Purchaser shall obtain and maintain the following insurance policies:

(i) Workers' compensation insurance, with limits of liability at least equal to the statutory requirements therefor;

(ii) Employer's liability insurance of not less than one million dollars (\$1,000,000);

(iii) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate. Seller shall be named as an additional insured under this liability insurance;

(iv) Property insurance on the Premises, written on an "all risk" or broad special perils form, in an amount equal to the full current replacement value of the property, on an agreed

value (no coinsurance) basis, and with a deductible not to exceed \$10,000. Such coverage may be written as part of a blanket property policy, but if written as part of a blanket policy Purchaser must provide evidence that the policy does not include a margin clause, or, if there is a margin clause, that the value declared is equal to the full current replacement value of the property. Seller must be named as loss payee on the policy with ISO form CP 12 18 06 07 Loss Payable Provisions, Clause D, or equivalent, and the policy must provide for ten (10) days' notice to Seller in the event of cancellation or nonrenewal;

(v) Purchaser may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and

(vi) Purchaser may elect to self-insure any or all of the insurance requirements contained in this Agreement.

**EXHIBIT D**

**ENERGY PRICE**

<i>Contract Year</i>	<i>Energy Price (\$/kWh)</i>
1	\$0.073
2	\$0.073
3	\$0.073
4	\$0.073
5	\$0.073
6	\$0.073
7	\$0.073
8	\$0.073
9	\$0.073
10	\$0.073
11	\$0.073
12	\$0.073
13	\$0.073
14	\$0.073
15	\$0.073
16	\$0.073
17	\$0.073
18	\$0.073
19	\$0.073
20	\$0.073

**EXHIBIT E**

**MINIMUM SYSTEM PURCHASE PRICE**

<b><i>Contract Year</i></b>	<b><i>Minimum System Purchase Price</i></b>
5	\$68,230
6	\$102,011
7	\$91,790
8	\$83,502
9	\$75,256
10	\$67,050
11	\$58,886
12	\$50,763
13	\$42,680
14	\$34,638
15	\$26,636
16	\$18,674
17	\$14,901
18	\$11,148
19	\$7,413
20	\$3,697



**Exhibit F**

**PERMITS AND APPROVALS**

1. Interconnection Application
2. Building Permit
3. Electrical Permit
4. Electric Utility Contingent Approval
5. Interconnection Agreement
6. Municipal Certificate of Completion
7. Electric Utility Witness Test
8. Electric Utility Approval to Operate

**Exhibit G**

**MAINTENANCE SHUTDOWN ALLOTMENT**

<i>Contract Year</i>	<i>kWh</i>
1	763
2	763
3	763
4	763
5	763
6	763
7	763
8	763
9	763
10	763
11	763
12	763
13	763
14	763
15	763
16	763
17	763
18	763
19	763
20	763

## SYSTEM SITE LEASE AGREEMENT

This SYSTEM SITE LEASE AGREEMENT (this "Agreement") is made and entered into as of \_\_\_\_\_, 2016 (the "Effective Date") by and between CEFLA Holdings LLC, a Connecticut limited liability company ("Lessee"), and the Town of Fairfield, a municipal corporation organized and existing under the laws of the State of Connecticut ("Lessor"). Each of Lessor and Lessee are sometimes referred to as a "Party" and collectively as the "Parties."

WHEREAS, Lessor is the owner of certain real property located in Fairfield, Connecticut together with certain improvements, buildings, and other structures consisting of the Public Works Garage located at 357 Veres St, Fairfield, CT 06824, as more particularly described on Exhibit A attached hereto (the "Premises") and which includes the area on which the System will be installed (the "Project Site");

WHEREAS, Lessee is the developer, owner, and operator of photovoltaic solar energy generation equipment and facilities;

WHEREAS, Lessee (as Seller) and Lessor (in this capacity, "Purchaser") are parties to that certain Solar Power Purchase Agreement dated of even date herewith (the "Solar PPA"), pursuant to which Lessee has agreed to sell to Purchaser, and Purchaser has agreed to purchase from Lessee, all of the electrical energy produced by the System (as defined in the Solar PPA) to be installed and operated on the Premises by Lessee; and

WHEREAS, as a condition to entering into the Solar PPA, Lessee requires Lessor to enter this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

### AGREEMENT

1. **DEFINITIONS.** Capitalized terms used but not defined herein shall have the meanings assigned to them in the Solar PPA.

2. **LEASE.**

2.1 Lease. Lessor hereby leases the Project Site to Lessee in accordance with the terms and conditions and for the purposes set forth herein. The Parties intend that this lease create a valid and present interest in the Project Site in favor of Lessee. Therefore, this Agreement is an interest in and encumbrance upon the Project Site which shall run with the land and shall be binding upon the Project Site and Lessor and its successors and assigns for the benefit of Lessee and its successors and assigns.

Comment [LAF]: Please confirm

2.2 Term. The term of this Agreement shall be for twenty (20) years and shall be coterminous with the Solar PPA, commencing on the Effective Date (the "Term"); provided that this Agreement shall terminate (i) automatically upon the termination or expiration of the Solar PPA for a reason other than an Event of Default by Lessee in its capacity as Purchaser under the Solar PPA, and (ii) in the case of termination by Lessee following an Event of Default by Lessor in its capacity as Purchaser under the Solar PPA, following the payment of PPA Damages (as defined in the Solar PPA) to Lessee.

2.3 Payment to Lessor. Lessee shall pay to Lessor as rent the one-time sum of \$1.00 (the "One-Time Payment") within fifteen (15) days after the Effective Date. Lessor acknowledges and agrees that the One-Time Payment constitutes payment in full of rent for the Term, and no additional amount shall be due or owing to Lessor under this Agreement.

2.4 Permitted Uses. Lessee shall have the right to occupy and use the Project Site for solar energy conversion, for the collection and transmission of electric power, and for related and incidental purposes and activities (collectively, "Operations") including, but not limited to, the construction, installation, improvement, relocation, operation, maintenance and repair of the System and, as may be occasioned by the termination of the Solar PPA, removal of the System.

2.5 Lessee's Exercise of Rights. Lessee may construct and install the System on the Premises in the manner Lessee deems reasonable and appropriate; provided, however, that Lessee shall not unreasonably interfere with Lessor's use, operation, or maintenance of the Premises. The System shall be installed within the areas of the Project Site.

2.6 Premises Utilities. Lessor shall provide existing and available utilities to the Project Site in connection with Lessee's construction, start-up, maintenance, repair, replacement, operation and removal of the System. Lessor acknowledges and agrees that Lessee's use of the Premises includes the nonexclusive appurtenant right to the use of water lines, sewer lines, storm water lines, power lines, and telephone and communication lines. Without limiting the generality of the foregoing,

2.7 Construction Laydown Area. Lessor shall provide Lessee sufficient space on the Premises for the temporary storage and staging of tools, materials and equipment reasonably necessary during installation and any maintenance, repair, replacement or removal of the System, provided that Lessee shall use commercially reasonable efforts to minimize disruption to Lessor's operations, and provided further that Lessee understands and acknowledges that space is limited at the Premises. Lessor and Lessee shall coordinate and cooperate in determining the amount of space and specific portion of the Premises necessary for such purposes.

2.8 Notice. Except as may be required by an emergency, Lessee shall give Lessor reasonable written or telephonic notice before any entry onto the Premises by Lessee's employees, agents, or contractors. In the event of Lessee's entry due to an emergency, Lessee shall promptly notify Lessor of its entry and the nature of the emergency.

### 3. EASEMENTS.

3.1 Access Easement and Use Rights. Lessor grants Lessee a nonexclusive easement for access and use of the Premises, on, under, over, and across the Premises and any other real property adjacent to the Premises and owned by Lessor (collectively, the "Easement Area"), for the purposes of locating, installing, operating, maintaining, improving, repairing, relocating, and removing the System on the Premises (the "Use Rights"). The Use Rights include the right of parking, access, and ingress to and egress from the System on, over, and across the Easement Area during the Term, and shall survive, unless Purchaser has exercised the Purchase Option, for a period of one hundred eighty (180) days following the termination of this Agreement for the purpose of removing the System. Without limiting the foregoing grant, Lessor covenants that the Use Rights may be used to achieve all the purposes set forth in the Solar PPA.

3.2 Solar Easement. Lessor hereby grants Lessee a solar easement on, over, and above the Easement Area for the free passage of solar radiation to the System. Lessor shall not obstruct, or allow any tenant or assignee of Lessor to obstruct, the passage of direct solar radiation across the Easement Area to the System. Trees, structures, and improvements located on the Easement Area as of the Effective Date shall be allowed to remain, and Lessee may not require their removal; provided that Lessee may require that any trees or other vegetation be pruned or trimmed to the point that they do not obstruct the passage of direct solar radiation across the Easement Area to the System to a degree greater than on the Effective Date. Lessor shall not place or plant any trees, structures, or improvements on the Easement Area after the Effective Date that may, in Lessee's sole judgment, impede or interfere with the passage of direct solar radiation to the System, unless Lessor has received prior written approval from Lessee. Lessee and Lessor further agree to execute and record such instruments or addenda to this Agreement as may be required under applicable State or local law to evidence the solar easement granted in this Section.

### 4. RIGHTS OF LESSEE.

4.1 Solar Resources. Lessee shall have the sole and exclusive right to convert all of the solar resources of, and to conduct Operations on, the Premises. Lessor shall not grant any rights in the Premises purporting to permit others to conduct Operations on the Premises in derogation of Lessee's sole and exclusive rights and privileges hereunder. Without the prior written consent of Lessee, Lessor shall not (i) waive any right available to Lessor or grant any right or privilege subject to the consent of Lessor by law or contract, including without limitation any environmental regulation, land use ordinance, or zoning regulation, with respect to setback requirements, or other restrictions and conditions respecting the placement of the System on the Premises or (ii) grant, confirm, acknowledge, recognize, or acquiesce in any right claimed by any other Person to conduct Operations on the Premises, and Lessor agrees to give Lessee notice of any such claims and to cooperate with Lessee in resisting and disputing such claims.

4.2 Signage. Lessee shall have the right to erect, modify, and maintain reasonable signage on the Premises with respect to the System and to Lessee's interests therein. Lessee shall, at Lessee's expense, obtain all necessary permits and approvals of appropriate land use bodies required to erect said signage.

4.3 Enforcement of Legal Rights. Lessee shall have the right to enforce Lessor's

rights under applicable laws protecting solar energy systems from obstruction. Lessor shall cooperate with any efforts by Lessee to enforce such rights. Lessee shall bear all costs and expenses incurred in enforcing said rights.

## 5. DESIGN AND CONSTRUCTION OF SYSTEM.

5.1 Design and Construction. Lessor hereby consents to the construction of the System in accordance with the plans and specifications set forth on the attached Exhibit C. Lessee shall coordinate construction of the System so as to reasonably minimize disruption to the Premises and to Lessor's activities thereon.

5.2 Removal Upon Termination. Upon the termination or expiration of this Agreement for any reason, unless Purchaser has exercised the Purchase Option, Lessee shall, within one hundred and eighty (180) days after the date of expiration, remove the System from the Premises, provided that Lessee shall not be required to remove electrical wiring or infrastructure, or any portion of the System below grade level. Other than as specifically provided otherwise herein or in the Solar PPA, the removal of the System shall be at the cost of Lessee. Lessee shall restore the premises to the same condition as at the commencement of this agreement less usual wear and tear.

## 6. THE PREMISES.

6.1 Representations of Lessor. Lessor represents and warrants to Lessee that:

6.1.1 Lessor has the requisite capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its legislative body, and that the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of Lessor;

6.1.2 This Agreement constitutes Lessor's legal, valid and binding obligation enforceable against it in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

6.1.3 No suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the Lessor that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of Lessor to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of Lessor;

6.1.4 Lessor owns the Premises in fee simple, subject to no liens or encumbrances except as set forth in Exhibit B.

6.2 Confirmation of Ownership. At the request of Lessee, Lessor shall obtain executed and acknowledged instruments and such other documents as Lessee or Lessee's title company may require to confirm Lessor's ownership of the Premises or to complete or evidence the full granting of the leasehold interest in the Project Site as intended by this Agreement.

6.3 Liens.

6.3.1 Intentionally left blank.

6.3.2 Notice to Premises Lienholders and Release. Lessor shall give effective notice of Lessee's ownership of the System and the System's status as personal property to all parties having an interest in or any mortgage, pledge, lien (including mechanics', labor or materialmen's liens), charge, security interest, or encumbrance of any nature (collectively, "Liens") upon the real property and fixtures that are part of the Premises. If there is any Lien against the Premises that could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Lessor shall obtain a disclaimer or release of such Lien. Lessor consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises, and any other filing by Lessee in a public office regarding its ownership of the System deemed necessary or appropriate by Lessee, and Lessor hereby appoints Lessee as its agent with regard to any such filing and authorizes Lessee to take required actions on Lessor's behalf required for such filing.

6.3.3 System Liens. Lessor shall not directly or indirectly allow any Lien on or with respect to the System by, through or under Lessor. If Lessor becomes aware of a Lien on the System by, through or under Lessor, Lessor shall promptly give Lessee written notice of such Lien and shall take such action as is necessary or appropriate to have such Lien discharged and removed. Lessor shall indemnify Lessee against all reasonable costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such Lien.

6.3.4 Premises Liens. Lessee shall not directly or indirectly allow any Lien by, through or under Lessee, on or with respect to the Premises or any interest therein, excluding Lessee's leasehold interest created pursuant to this Agreement, or any other asset of Lessor, including, without limitation, any Lien arising from or relating to the construction, ownership, maintenance or operation of the System by Lessee. Lessee shall defend and indemnify Lessor against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing any such Lien.

6.4 Quiet Enjoyment. Lessee shall enjoy quiet and peaceful use, enjoyment and possession of the Project Site, 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, and neither Lessor nor any person claiming by, through or under Lessor shall disturb Lessee's quiet and peaceful use, enjoyment and possession of the Project Site.

6.5 No Interference. Lessor hereby agrees, for itself, its agents, employees, representatives, successors, and assigns, that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair, or otherwise adversely affect the System or its functions, including without limitation activities that may adversely affect the System's exposure to sunlight. Lessor further covenants for itself and its agents, employees, representatives, successors, and assigns that it will not (i) interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Agreement; (ii) take any action that will interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may interfere with the transmission of electrical energy to or from the Premises; (iv) take any action that may impair Lessee's access to the Premises for the

purposes specified in this Agreement; (v) plant or maintain any vegetation or erect or maintain any structure that will, during daylight, cast a shadow on the System; or (vi) take any action that may impair Lessee's access to any portion of the System.

**6.6 System Property of Lessee; Transfer of the Premises.** Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the System and all equipment (including, but not limited to, photovoltaic modules or panels, inverters, meters, wire, data monitoring equipment, and cabling), components and moveable property of Lessee attached to or used in the operation of the System, that no portion or component of the System is a fixture, and that in the event that the Premises are sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered (a "Transfer"), such Transfer shall not attach to or affect the System, or Lessee's ownership rights to the System.

**6.7 Transfer of Premises.** Lessor shall not Transfer all or any portion of the Premises unless the transferee agrees in writing that its interest in the Premises is subject and subordinate in all respects to the terms of this Lease. Lessor shall give Lessee at least sixty (60) days' prior notice of any Transfer of all or any portion of the Premises. Any such notice shall identify the transferee, the portion of the Premises to be transferred, and the proposed date of the Transfer.

**6.8 Premises Security, Health and Safety.** Lessor shall continue to provide any existing security measures at the Premises that are in place as of the Effective Date of this Agreement. Lessor shall maintain the Premises in a structurally sound and safe condition consistent with all applicable Laws. If Lessor becomes aware of any circumstances relating to the System that creates an imminent risk of damage or injury to the System or any employee of Lessee, Lessor shall promptly notify Lessee.

**6.9 System Security.** Lessee may install, at Lessee's expense, all security measures that Lessee, in its sole discretion, determines are or may be reasonably necessary for the System. Such measures may, but will not necessarily, include warning signs, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the System or injury or damage to persons or property resulting from the System and Operations. Such measures shall not interfere with the use of the Premises.

**6.10 Maintenance of Premises.** Lessor shall, without interfering with the operation of the System, maintain the Premises in good condition and repair, including the integrity of the roof, and shall use commercially reasonable efforts to maintain Lessor's electrical energy equipment located on the Premises in good condition and repair so as to be able to receive and use the Energy generated by the System. Lessor shall maintain its connection and service contract(s) with its local utility, or any successors thereto, so that Lessor can, upon any suspension or interruption of delivery of energy from the System, provide the Premises with its full requirements for electricity.

**6.11 System Maintenance.** During the Contract Term, Lessee shall, at Lessee's sole cost, maintain the System, the Project Site and all areas of the Premises used by Lessee in the Operations, in accordance with applicable laws.

**6.12 Clean Condition.** Lessee shall not unreasonably clutter the Project Site or the Premises and shall collect and dispose of any and all of Lessee's refuse and trash.



6.13 Taxes. Lessor shall pay when due all real property taxes and assessments levied against the Premises by any governmental body. If applicable, Lessee shall pay all personal property taxes levied on the system. Failure to pay said taxes shall constitute a Lessee Default.

## 7. DEFAULT; REMEDIES.

7.1 Lessee Default. Each of the following events shall constitute a "Lessee Default":

7.1.1 Lessee breaches any material term of this Agreement and (i) if such breach is capable of being cured within thirty (30) days after Lessor's notice of such breach, Lessee has failed to cure the breach within such thirty (30) day period, or (ii) if Lessee has diligently commenced work to cure such breach during such thirty (30) day period but such breach is not capable of cure within such period, Lessee has failed to cure the breach within a further one hundred and fifty (150) day period (such aggregate period not to exceed one hundred and eighty (180) days from the date of Lessor's notice); and

7.1.2 (i) Lessee commences a voluntary case under any bankruptcy law; (ii) Lessee fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessee in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Lessee remains undismissed or undischarged for a period of sixty (60) days.

7.2 Lessor's Remedies. If a Lessee Default has occurred and is continuing, Lessor may terminate this Agreement by written notice to Lessee following the expiration of the applicable cure period, and may exercise any other remedy it may have at law or equity.

7.3 Lessor Defaults. The following events shall be defaults with respect to Lessor (each, a "Lessor Default"):

7.3.1 Lessor breaches any material term of this Agreement and such breach remains uncured for thirty (30) days following notice of such breach to Lessor; and

7.3.2 (i) Lessor commences a voluntary case under any bankruptcy law; (ii) Lessor fails to controvert in a timely and appropriate manner, or acquiesces in writing to, any petition filed against Lessor in an involuntary case under any bankruptcy law; or (iii) any involuntary bankruptcy proceeding commenced against Lessor remains undismissed or undischarged for a period of sixty (60) days.

7.4 Lessee's Remedies. If a Lessor Default has occurred and is continuing, Lessee may terminate this Agreement by written notice to Lessor following the expiration of the applicable cure period. Lessee may also exercise any other remedy it may have at law or equity, including recovering from Lessor all resulting damages, which damages shall include, but not be limited to, the PPA Damages and all other amounts of any nature due under this Agreement.

## 8. LIMITATIONS.

8.1 Limitation of Liability. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE PARTIES AGREE THAT TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE, WHETHER IN

CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS, FOR SPECIAL, INDIRECT, INCIDENTAL, MULTIPLE, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOST PROFITS OR LOSS OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THE SYSTEM OR THIS AGREEMENT. THE FOREGOING NOTWITHSTANDING, THE PPA DAMAGES SHALL NOT BE CONSIDERED CONSEQUENTIAL DAMAGES AND SHALL NOT BE SUBJECT TO THE LIMITATIONS SET FORTH IN THIS SECTION.

**8.2 Equitable Relief.** The Parties acknowledge that money damages would not be a sufficient remedy for any breach of this Agreement, and that, accordingly, in the event of any such breach or threatened breach, either Party shall be entitled to immediately seek any and all remedies available to it at law or in equity, including but not limited to an injunction or specific performance, from a court of competent jurisdiction.

## **9. FINANCING ACCOMMODATIONS.**

**9.1 Lessor Acknowledgment.** Lessor acknowledges that Lessee may finance the System and that Lessee's obligations may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a security interest in the System. In order to facilitate such financing, and with respect to each Financing Party Lessor agrees as follows:

**9.1.1 Consent to Collateral Assignment.** Lessee shall have the right to assign this Agreement as collateral for financing or refinancing of the System, and Lessor hereby consents to the collateral assignment by Lessee to any Financing Party of Lessee's right, title, and interest in and to this Agreement.

**9.1.2 Financing Party's Rights Following Default.** Notwithstanding any contrary term of this Agreement:

(a) Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Lessee, any and all rights and remedies of Lessee under this Agreement in accordance with the terms of this Agreement. Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System. Financing Party shall, as a condition of this Lease, Perform all obligations of Lessee pursuant to the Solar Power Purchase Agreement.

(b) Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty, or obligation required of Lessee hereunder or cause to be cured any default or event of default of Lessee in the time and manner provided by the terms of this Agreement. Nothing herein requires Financing Party to cure any default of Lessee (unless Financing Party has succeeded to Lessee's interests) to perform any act, duty, or obligation of Lessee, but Lessor hereby gives Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the System, including any sale thereof by Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Lessee to Financing Party, Financing Party shall give notice to Lessor of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a Lessee Default.

(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Lessee under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, Lessor shall enter into a new site lease agreement with Financing Party or its assignee on substantially the same terms as this Agreement.

9.1.3 Financing Party Cure Rights. Lessor shall not exercise any right to terminate or suspend this Agreement unless Lessor has given prior written notice to each Financing Party of which Lessor has notice. Lessor's notice of an intent to terminate or suspend must specify the condition giving rise to such right. Financing Party has the longer of thirty (30) days and the cure period allowed for a default of that type under this Agreement to cure the condition; provided that if the condition cannot be cured within such time but can be cured within the extended period, Financing Party may have up to an additional ninety (90) days to cure if Financing Party commences to cure the condition within the thirty (30) day period and diligently pursues the cure thereafter. Lessor's and Lessee's obligations under this Agreement shall otherwise remain in effect, and Lessor and Lessee shall be required to fully perform all of their respective obligations under this Agreement during any cure period.

9.1.4 Continuation Following Cure. If Financing Party or its assignee acquires title to or control of Lessee's assets and cures all defaults existing as of the date of such change in title or control within the time allowed by Section 9.1.3, then this Agreement shall continue in full force and effect.

9.2 Notice of Defaults and Events of Default. Lessor agrees to deliver to each Financing Party a copy of all notices that Lessor delivers to Lessee pursuant to this Agreement.

## 10. NOTICES.

10.1 Notices. Any notice required, permitted, or contemplated hereunder shall be in writing and addressed to the Party to be notified at the address set forth below or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder. Such notices may be sent by personal delivery or recognized overnight courier, and shall be deemed effective upon receipt.

To Lessee:           CEFIA Holdings LLC  
845 Brook Street  
Rocky Hill, CT 06067  
Attention: General Counsel

To Lessor:           Town of Fairfield  
Sullivan Independence Hall, Second Floor  
725 Old Post Road  
Fairfield, CT 06824  
Attention: First Selectman

## 11. GOVERNING LAW; VENUE.

11.1 Choice of Law. This Agreement shall be construed in accordance with the laws

of the State of Connecticut, without regard to its conflict of laws principles.

**11.2 VENUE.** LESSOR AND LESSEE EACH HEREBY IRREVOCABLY SUBMITS IN ANY SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, WHETHER ARISING IN CONTRACT, TORT, EQUITY, OR OTHERWISE, TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN FAIRFIELD COUNTY, CONNECTICUT AND WAIVES ANY AND ALL OBJECTIONS TO JURISDICTION THAT IT MAY HAVE UNDER THE LAWS OF THE UNITED STATES OR OF ANY STATE. LESSOR AND LESSEE EACH WAIVE ANY OBJECTION THAT IT MAY HAVE (INCLUDING, WITHOUT LIMITATION, ANY OBJECTION OF THE LAYING OF VENUE OR BASED ON FORUM NON CONVENIENS) TO THE LOCATION OF THE COURT IN WHICH ANY PROCEEDING IS COMMENCED.

## **12. INDEMNIFICATION.**

**12.1 Lessee's General Indemnity.** Lessee shall indemnify, defend, and hold harmless Lessor (including Lessor's permitted successors and assigns) and Lessor's subsidiaries, directors, officers, members, shareholders, and employees (collectively, "Lessor Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including reasonable attorneys' fees, incurred by Lessor Indemnified Parties arising from or relating to (i) Lessee's breach of this Agreement, or (ii) Lessee's negligence or willful misconduct. Lessee's indemnification obligations under this Section 12.1 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessor Indemnified Party.

**12.2 Lessee's Environmental Indemnity.** Lessee shall indemnify, defend and hold harmless the Lessor Indemnified Parties against, any claims, costs, damages, fees, or penalties arising from a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

**12.3 Lessor's General Indemnity.** Lessor shall indemnify, defend, and hold harmless Lessee (including Lessee's permitted successors and assigns) and Lessee's subsidiaries, directors, officers, members, shareholders, and employees (collectively, "Lessee Indemnified Parties") from and against any and all third-party claims, losses, costs, damages, and expenses, including PPA Damages and reasonable attorneys' fees, incurred by Lessee Indemnified Parties arising from or relating to (i) Lessor's breach of this Agreement, (ii) the negligence or willful misconduct of Lessor, Lessor's tenants, or Lessor's invitees, or (iii) the failure of building or roof to support, in whole or in part, the System as installed, including changes in roof surface incline. Lessor's indemnification obligations under this Section 12.3 shall not extend to any claim to the extent such claim is due to the gross negligence or willful misconduct of any Lessee Indemnified Party.

**12.4 Lessor's Environmental Indemnity.** Lessor shall indemnify, defend and hold harmless the Lessee Indemnified Parties for, from, and against, any claims, costs, damages, fees,

or penalties, including PPA Damages, arising from the presence of any Hazardous Materials on or under the Premises, except to the extent that such presence is attributable to a violation by Lessee or Lessee's agents or contractors of any federal, State, or local law, ordinance, order, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Material on or under the Premises.

### 13. INSURANCE.

13.1 Insurance Required. Each Party shall maintain in full force and effect throughout the Contract Term insurance coverage in the amounts and types set forth on Exhibit D. Each policy of insurance maintained by each Party shall: (a) name the other Party as loss payee (to the extent covering risk of loss or damage to the Premises or the System) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (b) contain endorsements providing that such policy shall not be cancelled or amended with respect to the named insured and its designees without thirty (30) days' prior written notice to the relevant Party. Each Party shall, within ten (10) days of written request therefor, furnish current certificates of insurance to the other Party evidencing the insurance required hereunder.

13.2 Waiver of Subrogation. Each policy of insurance required hereunder shall provide for a waiver of subrogation rights against the other Party, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of that policy.

13.3 No Waiver of Obligations. The provisions of this Agreement shall not be construed in a manner so as to relieve any insurer of its obligations to pay any insurance proceeds in accordance with the terms and conditions of valid and collectable insurance policies. The liabilities of the Parties to one another shall not be limited by insurance.

### 14. MISCELLANEOUS.

14.1 Assignments. Neither Party shall have the right to assign any of its rights, duties, or obligations under this Agreement without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. The foregoing notwithstanding, Lessee may assign any of its rights, duties, or obligations under this Agreement, without the consent of Lessor, (i) to any of its affiliates, (ii) to any third party in connection with a financing transaction, or (iii) to any purchaser of the System.

14.2 Entire Agreement. This Agreement and the Solar PPA represent the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between the Parties with respect to the subject matter hereof.

14.3 Amendments. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of Lessee and Lessor.

14.4 No Partnership or Joint Venture. Lessee and Lessee's agents, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Lessor. This Agreement shall not impart any rights enforceable by any third party

(other than a permitted successor or assignee bound to this Agreement).

**14.5 Headings; Exhibits.** The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement. Any Exhibits referenced within and attached to this Agreement, including any attachments to the Exhibits, shall be a part of this Agreement and are incorporate by reference herein.

**14.6 Remedies Cumulative; Attorneys' Fees.** No remedy herein conferred upon or reserved to any Party shall exclude any other remedy herein or by law 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. If any action, arbitration, judicial reference, or other proceeding is instituted between the Parties in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein.

**14.7 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. Any such waiver must be in a writing executed by the Party making such waiver.

**14.8 Severability.** If any part, term, or provisions of this Agreement is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this Agreement and shall not render this Agreement unenforceable as a whole. Instead, the part of the Agreement found to be invalid, unenforceable, or illegal shall be amended, modified, or interpreted to the extent possible to most closely achieve the intent of the Parties and in the manner closest to the stricken provision.

**14.9 Counterparts and Facsimile Signatures.** This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or portable document format (".PDF") signatures shall have the same effect as original signatures, and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

**14.10 No Partnership or Sale.** Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, buyer and seller real property, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

**14.11 Memorandum of Lease.** Lessor and Lessee agree to execute and record a memorandum of this Lease. Lessor shall execute, with notarization, and deliver to Lessee together with its initial delivery of the signed Agreement a recordable Memorandum of Lease in form reasonably acceptable to the Parties ("Memorandum of Lease") which shall include the Exhibit A description of the Project Site and which Lessee shall then record in the Official Records of the municipality in which the Project Site is located. Lessee shall be responsible for the cost of recordation.

**14.12 Estoppel Certificate.** From time to time, upon written request by Lessee, Lessor shall provide within seven (7) days thereafter an estoppel certificate attesting, to the knowledge of Lessor, of Lessee's compliance with the terms of this Agreement, or detailing any known issues of noncompliance.

**15. FREEDOM OF INFORMATION ACT.** Green Bank is a "public agency" for purposes of the Connecticut Freedom of Information Act ("FOIA"). This Agreement and information received pursuant to this Agreement will be considered public records and will be subject to disclosure under the FOIA, except for information falling within one of the exemptions in Conn. Gen. Stat. Sections § 1-210(b) and § 16-245n(d).

The Parties agree that Attachment C hereto and any attachment or exhibit provided by Contractor in compliance therewith are proprietary and confidential, and there is no necessity to mark such documents to achieve the status of proprietary and confidential.

Contractor acknowledges that (1) Green Bank has no obligation to notify Contractor of any FOIA request it receives, (2) Green Bank may disclose materials claimed by Contractor to be exempt if in its judgment such materials do not appear to fall within a statutory exemption, (3) Green Bank may in its discretion notify Contractor of FOIA requests and/or of complaints made to the Freedom of Information Commission concerning items for which an exemption has been claimed, but Green Bank has no obligation to initiate, prosecute, or defend any legal proceeding, or to seek to secure any protective order or other relief to prevent disclosure of any information pursuant to an FOIA request, (4) Contractor will have the burden of establishing the availability of any FOIA exemption in any such legal proceeding, and (5) in no event shall Green Bank or any of its officers, directors, or employees have any liability for the disclosure of documents or information in Green Bank's possession where Green Bank, or such officer, director, or employee, in good faith believes the disclosure to be required under the FOIA or other law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this System Site Lease Agreement to be duly executed and delivered as of the Effective Date.

**LESSEE**

CEFIA Holdings LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**LESSOR**

Town of Fairfield

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

**PREMISES; PROJECT SITE**

The Premises are certain real property located in the town of Fairfield, Connecticut together with certain improvements, buildings, and other structures consisting of the Public Works Garage located at 557 Veres St, Fairfield, CT 06824.

Comment [LAF2]: Please confirm

The Project Site will be the roof of the Public Works Garage, to be laid out approximately as follows:



ENCUMBRANCES

**EXHIBIT B**

ENCUMBRANCES ON LESSOR'S TITLE

**ENCUMBRANCES ON LESSOR'S TITLE**

None



**EXHIBIT C**

**SYSTEM DESCRIPTION**

**Comment [LAF3]: Please confirm**

DC System Size: 43.9 kW  
AC System Size: 43.2 kW  
Estimated Annual Energy  
Output: 55.71 MWh  
Modules: Canadian Solar CS6X-325P (325W) or similar  
Total # of Panels: 135  
Inverters: Fronius Symo 12.0-3 208 or similar  
Total # of Inverters: 3  
Optimizers: [n/a]  
Total # of Optimizers: [n/a]  
Racking: [Panel Claw Polar Bear III]

**EXHIBIT D**

**INSURANCE REQUIREMENTS**

- (a) Lessee shall obtain and maintain the following insurance policies:
- (i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the System of not less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate. Lessor shall be named as an additional insured under this liability insurance, provided however that Lessee shall in no event be obligated to repair or replace Lessor's buildings or Premises;
  - (ii) Lessee may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and
  - (iii) Lessee may elect to self-insure any or all of the insurance requirements contained in this Agreement.
- (b) Lessor shall obtain and maintain the following insurance policies:
- (i) Comprehensive general liability insurance against liability for injury to or death of any Person or damage to property in connection with the use, operation or condition of the Premises of not less than two million dollars (\$2,000,000) combined single limit per occurrence and annual aggregate. Lessee shall be named as an additional insured under this liability insurance;
  - (ii) Property insurance on the Premises, written on an "all risk" or broad special perils form, in an amount equal to the full current replacement value of the property, on an agreed value (no coinsurance) basis, and with a deductible not to exceed \$10,000. Such coverage may be written as part of a blanket property policy, but if written as part of a blanket policy Lessor must provide evidence that the policy does not include a margin clause, or, if there is a margin clause, that the value declared is equal to the full current replacement value of the property. Lessee must be named as loss payee on the policy with ISO form CP 12 18 06 07 Loss Payable Provisions, Clause D, or equivalent, and the policy must provide for ten (10) days' notice to Lessee in the event of cancellation or nonrenewal;
  - (iii) Lessor may satisfy the insurance requirements contained in this Agreement though any combination of primary and/or excess coverage; and
  - (iv) Lessor may elect to self-insure any or all of the insurance requirements contained in this Agreement.

**EQUIPMENT SHARING AGREEMENT**  
**MULTI-TOWN/AGENCY EQUIPMENT COOPERATIVE - ICE GRANT**  
**City of Stamford**  
**City of Norwalk**  
**Norwalk Hospital**  
**Town of Fairfield FD**

**WHEREAS**, General Statutes § 7-148cc establishes a process wherein municipalities may develop and implement Equipment Sharing Agreements to provide shared equipment and other assets; and

**WHEREAS**, Section 75 of Public Act 11-57 establishes the Intertown Capital Equipment Purchase Incentive (ICE) Program, intended to foster and enhance joint provisions of municipal and agency equipment sharing across town borders; and

**WHEREAS**, the exchange, furnishing or providing by one or more municipalities or agencies for joint use of certain equipment has been found to be of benefit to all participating municipalities or agencies, both in making more equipment available and in reducing the cost of such equipment use; and

**WHEREAS**, the City of Stamford, City of Norwalk, Norwalk Hospital and Town of Fairfield FD (“the Participating Municipalities and Agencies”) desire to enter into an Equipment Sharing Agreement for the shared use of equipment (set forth in Schedule A to this agreement);

**WHEREAS**, the Participating Municipalities and Agencies are in receipt of the following grant from the Intertown Capital Equipment (“ICE”) Purchase Incentive Program, General Statutes § 4-66m:

<u>GRANT</u>	<u>EQUIPMENT</u>	<u>GRANT AMOUNT</u>
Intertown Capital Purchasing Incentive (ICE)	Tactical Personal Protective Equipment (T-PPE)	\$160,037.00

**WHEREAS**, a portion of the equipment is expected to be purchased through the above referenced grant funding from the State of Connecticut as part of the ICE Program and the balance will be shared among the Participating Municipalities and Agencies as follows:

	# of sets	Total Cost	CT OPM share	Local share
City of Stamford	48	\$96,022	\$76,818	\$19,204
City of Norwalk	15	\$30,007	\$24,006	\$6,001
Norwalk Hospital	21	\$42,009	\$33,607	\$8,402
Town of Fairfield FD	16	<u>\$32,007</u>	<u>\$25,606</u>	<u>\$6,401</u>
		\$200,045	\$160,037	\$40,008

**WHEREAS**, the ICE grant program is administered by the State of Connecticut Office of Policy and Management (“OPM”).

**NOW THEREFORE**, to accomplish the goal of providing necessary municipal services in an efficient manner by sharing equipment with neighboring towns, each Participating Municipality and Agency hereby adopts this Equipment Sharing Agreement (“the Agreement”) according to the following terms:

1. Title Owner: The City of Stamford shall be the “title owner” for the initial piece(s) of Equipment listed on Schedule A and it will be carried on its schedule of property for insurance. In the event of damage to the Equipment which results in an insurance claim, the deductible will be payable by the municipality or agency that had use of the Equipment at the time of the accident, said use defined herein as “care, custody, and control”. The insurer for the Title Owner represents and agrees that the deductible may be paid by a town or agency other than the title owner town and that such payment shall not prevent payment of the claim. For subsequent pieces of equipment covered by this Agreement, the designated title holder shall be defined in Schedule A as amended from time to time. Each Participating Municipality and Agency agrees to cover the equipment while in its care, custody or control, for general liability coverage.

2. Governing Committee: Each Participating Municipality and Agency shall appoint its chief executive officer or designee as the point of contact for this Agreement (collectively “the Committee”). The Committee shall address any concerns that come up which are not explicitly defined in the Equipment Sharing Agreement and will be the ultimate arbiter of any disagreements among towns and agencies relative to any aspect of the Agreement. The Committee will be advised by the public safety representative of each Participating Municipality and Agency relative to issues related to acquisition, use and maintenance of equipment.

3. Liability: Each Participating Municipality and Agency will be responsible for any liability issues including but not limited to claims by its employees and by third parties that arise out of an event that occurs while it has care, custody and control of the Equipment.

4. Hold Harmless: The Participating Municipalities and Agencies hereby agree to indemnify and hold harmless the title owner municipality, including its officers, representatives, agents and employees, from any and all claims of liability and expenses related to any claims that may arise from an occurrence or omission when the equipment is in the possession of another Participating Municipality or Agency. The foregoing indemnity shall include reasonable attorneys’ fees and costs, if applicable, and shall not be limited by reason of any insurance coverage limits whether or not such insurance coverage was acquired pursuant to this Agreement.

5. Amendments: The Agreement may be amended by vote of the legislative body of each Participating Municipality and Agency in the same manner as its adoption. The Participating Municipalities and Agencies agree that additional municipalities or agencies may join this Agreement through an amendment to the Agreement as set forth in this section. The process to allow additional members to join the Agreement shall be established by the Committee and made an exhibit to the Agreement. The Participating Municipalities and Agencies shall be empowered to add to or subtract from the listed equipment from time to time upon the majority vote of the Committee members without amendment to this Agreement. The title owner municipality shall notify its insurance carrier of any and all additions or subtractions. It shall be the responsibility of each Participating

Municipality and Agency to properly train its operators to use the equipment subject to this Equipment Sharing Agreement.

6. Operational Considerations: The following operational considerations shall be enforced by the Participating Municipalities and Agencies through their respective Committee representatives:

- a. Housing: The equipment shall be housed in the municipality or agency to last use it unless, by vote of the Governing Committee, the decision is made to house the equipment in a different location.
- b. Maintenance: The municipality or agency housing the equipment will be responsible for performing routine maintenance based upon the manufacturer's recommendations; keeping a log of equipment usage including utilization, operator and hours of use; inspecting the equipment in cooperation with the operator prior to and after each use by a Participating Municipality or Agency; completing a checklist on equipment condition before and after each use by a Participating Municipality or Agency; and documenting any damage in writing. Copies of any damage reports should be sent to the Governing Committee as soon as possible after the damage occurs.
- c. Insurance: The equipment will be covered under the City of Stamford's insurance policies. Any liability insurance of the municipality or agency that is using the equipment shall be considered primary over any other collectible insurance regardless of any other insurance clauses.
- d. Insurance Deductible: If equipment is damaged by operator negligence and insurance covers repair of the damage to the equipment, any deductible on that insurance will be the responsibility of the housing municipality or agency.
- e. Operating Costs: The housing municipality or agency will cover routine operating costs (maintenance, insurance).

The Committee may develop an equitable method for handling operating costs and more extensive repair and replacement costs. This fee schedule for operating costs and repair and replacement costs of each piece of equipment covered by the Agreement shall be set forth in Schedule B. The housing municipality or agency will periodically evaluate each piece of equipment acquired under this agreement and each year will provide the Committee with an estimate of the cost of maintenance for the coming fiscal year prior to the annual budget cycle so that each Participating Municipality and Agency can plan for the cost in its annual budget.

- f. Operator Proficiency: Each Participating Municipality and Agency shall be responsible for ensuring that its staff is competent to use the Equipment and for addressing staff performance issues under the municipality's or agency's personnel policies should the Equipment be misused or damaged by an operator of that municipality or agency.
- g. Scheduling Use: Scheduling will be managed by the public safety representative of each Participating Municipality and Agency.

- h. Municipal and Agency Participation: The agreement will remain in force as long as at least two of the Participating Municipalities or Agencies, as may be amended from time to time, continue to participate.

7. Term: Subject to Section 10 herein, this Agreement shall remain in effect for five (5) years, beginning on the date last signed below (the Effective Date) and expiring five (5) years after the Effective Date. The Agreement shall automatically renew for successive terms of five (5) additional years unless all but one Participating Municipality or Agency provides a written notice to the others of its election not to renew the Agreement for another five (5) assessment years. Such notice must be provided at least sixty (60) days prior to the scheduled expiration of the original or any renewal term of the Equipment Sharing Agreement. Notwithstanding the foregoing, this Agreement shall terminate fifteen (15) years from the Effective Date.

8. Dispute Resolution: Disputes arising from the operation or interpretation of this Equipment Sharing Agreement that cannot be resolved by the Participating Municipalities and Agencies shall be submitted to mediation and arbitration to the American Arbitration Association (AAA) according to its rules and procedures.

9. Governing Law: This Equipment Sharing Agreement shall be governed by the laws of the State of Connecticut and the Participating Municipalities and Agencies hereby waive any choice of law. Any changes to the Equipment Sharing Agreement not within the scope of the powers granted to the Governing Committee shall be in writing in a document duly executed by each Participating Municipality and Agency. The Participating Municipalities and Agencies may separately execute counterpart originals of this Equipment Sharing Agreement (and any amendments thereto) which together shall be deemed to constitute one and the same agreement.

10. Adoption: This Agreement shall be adopted in accordance with General Statutes section 7-339c. The Participating Municipalities and Agencies agree to follow the procedures for review of this Agreement at least once every five years set forth in General Statutes § 7-148cc.

11. Execution: The Chief Executive Officer of each of the Participating Municipalities and Agencies is hereby authorized to execute this Equipment Sharing Agreement after authorization of the Agreement by the respective municipality's or agency's legislative body.

WHEREFORE, each Participating Municipality and Agency has duly approved and caused to be executed this Equipment Sharing Agreement on the dates set forth below, to be effective on the date last signed (the Effective Date).

**CITY OF STAMFORD**

\_\_\_\_\_  
By: David R. Martin  
Title: Mayor  
Date:

**CITY OF NORWALK**

\_\_\_\_\_  
By: Harry W. Rilling  
Title: Mayor  
Date:



**NORWALK HOSPITAL**

\_\_\_\_\_  
By: Mike Daglio  
Title: President  
Date:

**TOWN OF FAIRFIELD FD**

\_\_\_\_\_  
By: Michael C. Tetreau  
Title: First Selectman  
Date:

**SCHEDULE A**

**EQUIPMENT SHARING AGREEMENT:  
MULTI-TOWN EQUIPMENT COOPERATIVE**

**TITLE OWNER: CITY OF STAMFORD**

<b>Description</b>	<b>Purpose</b>
Level IV Rifle Plates (2)	Ballistic Protection
Rifle Plate Carrier	Ballistic Protection
Level IIIA Ballistic Helmet	Ballistic Protection
Knee Pads	Ortho Protection
Goggles	Eye Protection
LED Helmet Light	Scene Lighting
CAT Tourniquets (4)	Hemorrhage Control
ID Placards	Identification
Foxtrot Litter	Victim Evacuation
Other Accessories	Equipment Securement (ie: radio & TQ holsters)

**SCHEDULE B**

**EQUIPMENT SHARING AGREEMENT:  
MULTI-TOWN EQUIPMENT COOPERATIVE**

**FEE SCHEDULE FOR OPERATING, REPAIR AND REPLACEMENT COSTS**

*[to be determined by the Committee]*

1/11/2017

**NOISE CODE REVISION**

Fairfield has a Noise Ordinance in the Town Code that limits contractor work hours as well as other activities. The ordinance prohibits excessive noise (decibel levels are listed in the Noise Ordinance) in the hours between 10 pm and 7 am, Sunday through Thursday and 11 pm to 8 am, Friday and Saturday. During state and national holidays, the weekend schedule will be in effect from the previous evening through the end of the holiday.

Instead of Sunday morning having an earlier start time for excessive noise (i.e., construction), it should be switched with Friday.

This legislature amendment is co-sponsored by Brian Farnen, District 9, William Perugini, District 9, Ray Neuberger, District 6 and Samuel Cargill, District 10.

**Proposed legislation is set forth below:**

**CURRENT CODE:**

**Chapter 78: Noise**

**§ 78-2 Definitions**

**NIGHTTIME HOURS**

The hours between 10:00 p.m. and 7:00 a.m., Sunday through Thursday, and 11:00 p.m. to 8:00 a.m., Friday and Saturday. During any state or national holiday, the weekend schedule will be in effect from the previous evening through the end of the holiday.

**PROPOSED CODE:**

**Chapter 78: Noise**

**§ 78-2 Definitions**

**NIGHTTIME HOURS**

The hours between 10:00 p.m. and 7:00 a.m., Sunday Monday through ThursdayFriday, and 11:00 p.m. to 8:00 a.m., ~~Friday and Saturday~~ and Sunday. During any state or national holiday, the weekend schedule will be in effect from the previous evening through the end of the holiday.