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**APPROVAL OF LICENSE
AGREEMENT BETWEEN
ENCORE BTV SCHOOLS SOLAR II, LLC
AND THE BURLINGTON SCHOOL
DISTRICT**

In the year Two Thousand Thirteen.....
Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, the Burlington School Department (“BSD”) has been working with Encore BTV Schools Solar II, LLC (“Encore”) on a license agreement that would permit the installation and placement of solar panels on the roof of Flynn Elementary School (“License Agreement”); and

WHEREAS, the License Agreement will be for a term of twenty (20) years; and

WHEREAS, in exchange for the grant of the license, BSD will receive, among other benefits and securities, a license fee equal to ten (10) percent of the yearly gross income for the sale of electricity produced by the solar panels located on the school building under the Purchase Power Agreement between Encore and Burlington Electric Department that was adopted by this Council by Resolution at its meeting on December 17, 2012; and

WHEREAS, the License Agreement’s terms are substantially consistent with the terms of the two license agreements between the City of Burlington and Encore BTV Schools Solar I, LLC for the solar panels now on the roofs of Burlington High School and C.P. Smith Elementary School, approved by this Council by Resolution at its meeting on October 17, 2011; and

WHEREAS, pursuant to Burlington City Charter Article Twenty-Two, Section Fifty-Five, “[t]he City Council shall have the exclusive power to authorize sale or lease of any real or personal estate belonging to said City, and all conveyances, grants or leases of any such real estate shall be signed by the mayor and sealed with the City seal”; and

WHEREAS, this project achieves three objectives for BSD: to increase access to local, renewable energy and promote the development of distributed renewable energy in our community; to provide an educational opportunity for the children of the City of Burlington; and to provide a small financial benefit to the Burlington Schools; and

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**APPROVAL OF LICENSE
AGREEMENT BETWEEN
ENCORE BTV SCHOOLS SOLAR II, LLC
AND THE BURLINGTON SCHOOL
DISTRICT**

WHEREAS, at its regularly scheduled meeting of June 10, 2013, the Burlington School Board approved the License Agreement in a form consistent with their approval and authorized that it be signed by the Chair of the School Board or his designee subject to the approval and ratification of the City Council.

NOW, THEREFORE, BE IT RESOLVED that the City Council approves the License Agreement; and

BE IT FURTHER RESOLVED that the City Council authorizes and/or ratifies the execution of the License Agreement and such other documents as will be required for the lawful culmination of said license by the Chair of the Burlington School Board, and/or his designee(s), all subject to the prior approval of the City Attorney and Chief Operating Officer as appropriate; and

BE IT FUTHER RESOLVED that the City Council authorizes the Honorable Mayor Miro Weinberger to execute the License Agreement on behalf of the City of Burlington subject to the prior approval of the City Attorney and Chief Operating Officer, as appropriate.

JJ FLYNN ELEMENTARY SCHOOL

SOLAR FACILITIES LICENSE AGREEMENT

1 This Solar Facilities License Agreement ("Agreement") is made as of the ____
2 day of _____, 201__ by and between Encore BTV Schools Solar II, LLC, a Vermont
3 limited liability company (the "Developer"), and the City of Burlington, Vermont School
4 District, a school district with its principal office at 50 Colchester Avenue in said
5 Burlington (the "School District"). The Developer and the School District are sometimes
6 referred to individually as a "Party" and collectively as the "Parties."
7

8 **RECITALS**

9
10 WHEREAS, the School District is the custodian of certain real property located at 1645
11 North Avenue in Burlington, Vermont (the "Premises") with the JJ Flynn Elementary
12 School building (the "School Building") thereon.
13

14 WHEREAS, the Developer designs, installs, operates and maintains equipment and
15 systems, including solar panels (the "Panels") mounting systems, inverters, transformers,
16 integrators, all electrical lines and conduits required to collect and transmit electrical
17 energy to the Delivery Point and such additional utility lines, cables, conduits,
18 transformers, wires, meters, monitoring equipment and other necessary and convenient
19 equipment and appurtenances, that produce electricity from exposure to sunlight (the
20 "Solar Systems") for sale and distribution to public utilities.
21

22 WHEREAS, the Developer has entered into a Power Purchase Agreement, dated as of
23 March 14, 2013, with the City of Burlington Electric Department ("BED") (as amended,
24 modified and in effect from time to time, the "BED Agreement").
25

26 WHEREAS, the School District has agreed to permit and grant a license to the Developer
27 to design, install, operate, replace and maintain Solar Systems on the roof of the School
28 Building (the "Facilities") for the purpose of generating electricity to be sold and
29 distributed to BED pursuant to the BED Agreement.
30

31 NOW, THEREFORE, in consideration of the promises and the mutual covenants
32 contained herein, the sufficiency of which is hereby acknowledged by both Parties, the
33 Parties do hereby agree as follows:
34

- 35 1. **Grant of License.** The School District hereby grants to Developer:
36
37 a. a license to install, operate, maintain, improve and replace the Facilities on
38 the roof of the School Building and to make such penetrations into the
39 roof and the roof structure on the School Building and run wires and
40 conduit from the Facilities to the BED electricity distribution system; and
41

42 b. a license to enter on the Premises and into and on the School Building at
43 all reasonable times, provided reasonable advance notice (other than in the
44 event of an emergency) has been provided to the School District and
45 subject to the permission of the School District, the granting of which will
46 not unreasonably be withheld, conditioned or delayed, for the purpose of
47 carrying out Developer's obligations under the BED Agreement including,
48 but not limited to installing, operating, maintaining, improving and
49 replacing the Facilities so as to generate electricity for sale and
50 distribution to BED and installing, operating, maintaining, improving and
51 replacing machinery or equipment or other facilities to interconnect with
52 the BED electrical distribution system.
53

54 2. **Installation of the Facilities.** The Facilities shall be installed substantially as
55 provided in the Installation Plan attached hereto as Exhibit A. The Developer and
56 the School District shall consult and agree on when the installation of the
57 Facilities shall begin and any reasonable limits on the installation, which shall not
58 impede the Developer's ability to complete the construction and installation of the
59 Facilities prior to July 23, 2013. The School District shall respond to any requests
60 for approval necessary for installation of the Facilities as promptly as reasonably
61 possible. The commencement of the installation of the Facilities shall be subject
62 to the receipt (or waiver) by the School District of the following: (a) a copy of the
63 complete engineering study for the Facilities; (b) a copy of any zoning permit for
64 the Facilities or a letter or other document from the Burlington Department of
65 Planning and Zoning to the effect that no such permit is required; (c) a copy of the
66 certificate of public good for the Facilities from the Vermont Public Service
67 Board; (d) copies of the building and electrical permits for the Facilities from the
68 Burlington Department of Public Works; and (e) engineering drawings for the
69 Facilities, stamped or otherwise certified by an engineer.
70

71 3. **Modification and Expansion of the Facilities.** The Developer may at any time
72 modify the Facilities, for the purpose of, among other reasons, adding solar
73 power-generating equipment and/or interconnection equipment and increasing the
74 electricity generated by the Facilities; provided, however, that the School
75 District's prior written approval shall be required for any material modification or
76 expansion of the Facilities that would require additional rooftop space beyond that
77 originally proposed in the Installation Plan (a "Material Modification"). The
78 School District shall have no obligation, pursuant to the terms of this Agreement,
79 to grant Developer's request for a Material Modification and may choose to grant
80 or deny such a request at its sole discretion. Upon any proposal by the Developer
81 for a Material Modification, the Developer shall provide to the School District the
82 plans and specifications of such Material Modification. Such plans and
83 specifications shall be subject to the review and approval of the School District
84 and any approved Material Modification shall comply with and not reasonably
85 deviate from those approved plans and specifications. Any expansion of the
86 Facilities pursuant to this provision of the Agreement shall be controlled by and

87 subject to the terms of this entire Agreement.
88

89 4. **Approvals and Permits.** Developer shall obtain all necessary Approvals and
90 Permits required for the installation, construction and operation of the Facilities,
91 and pay all permit fees required in connection with its activities under this
92 Agreement. The School District shall cooperate with Developer in obtaining all
93 such Approvals and Permits.
94

95 5. **Maintenance of the School Building and the Facilities; Liability for Damage.**
96 The School District will maintain the roof and the School Building in good
97 condition and repair. The School District shall provide the Developer with at
98 least 30 days prior written notice of any repair, maintenance or construction
99 ("Maintenance") which could foreseeably impede, interrupt or prevent the
100 generation and supply of electricity by the Facilities or damage or otherwise
101 adversely impact the installation, operation and maintenance of the Facilities or
102 the Developer's performance under this Agreement or the BED Agreement in any
103 material respect (collectively, "Adverse Effects"); provided, however, in the event
104 of an emergency requiring immediate Maintenance, the School District shall use
105 commercially reasonable efforts to provide the Developer with as much notice as
106 may be reasonably practicable under the circumstances. The School District shall
107 coordinate with the Developer, or its successors and assigns, in good faith and
108 shall take all commercially reasonable measures necessary to ensure that the
109 Adverse Effects in connection with any such Maintenance are avoided or
110 minimized. The Developer shall cooperate with the School District in relocating
111 the Facilities temporarily, and Developer and its successors and assigns will be
112 responsible for and/or pay for the entire cost of any required relocation (the
113 "Relocation Costs"), during those periods of time in which such relocation is
114 necessary to repair or replace the roof or perform any other necessary
115 maintenance or construction to the School Building, provided that:
116

117 (a) The School District has provided Developer with at least 90 days written
118 notice of any such relocation of the Facilities (however, in the event of an
119 emergency requiring immediate action, the School District shall provide
120 the Developer with as much notice as possible under the circumstances);
121

122 (b) Such repair, replacement, maintenance or construction is required by law,
123 is set forth on Exhibit B hereto, or necessary to correct or prevent a
124 significant structural problem, an unreasonably dangerous condition, or a
125 condition reasonably likely to result in significant property damage if
126 unremedied;
127

128 (c) Such repair, replacement, maintenance or construction cannot reasonably
129 be performed without the relocation of the Facilities; and
130

131 (d) The School District shall coordinate with the Developer, or its successors

132 and assigns, in good faith and shall use its best efforts to ensure that any
133 such repair, replacement, maintenance or construction is performed in a
134 manner that minimizes the Relocation Costs.
135

136 Notwithstanding anything in this Agreement to the contrary, the Developer shall
137 have the right to deduct any reasonable Relocation Costs incurred from any
138 payments, fees or amounts payable by the Developer to the School District
139 pursuant to this Agreement, and specifically excluding the security deposit
140 payment outlined in Section 11 of this Agreement. The amount of such
141 reasonable Relocation Costs referenced in this Section 5 shall be subject to the
142 review and approval of the School District, which approval shall not be
143 unreasonably withheld, conditioned or delayed, prior to the deduction of any
144 payments, fees or amounts payable by the Developer to the School District. For
145 the avoidance of doubt, other than the Developer's deduction of Relocation Costs
146 incurred from the amount of the Developer's subsequent payments to the School
147 District pursuant to Section 15 of this Agreement, the School District shall have
148 no liability for Relocation Costs incurred by Developer pursuant to this Section 5.
149 If the nature of any School Board Maintenance is such that no accommodation,
150 modification or relocation of the Facilities can be made that is satisfactory to the
151 Developer, in the Developer's sole discretion, then the Developer may terminate
152 this Agreement, without being in breach, and remove the Facilities from the
153 Premises. The School District hereby represents and warrants to the Developer
154 that, except as set forth on Exhibit B hereto, no repair, replacement, maintenance
155 or construction of the School Building that would require the full or partial
156 relocation of the Facilities is currently planned or contemplated during the term of
157 this Agreement, and to its knowledge, no condition currently exists that is
158 reasonably likely to necessitate repair or replacement of the roof that would
159 require the full or partial relocation of the Facilities.
160

161 If damage is caused to the School Building by the Facilities or by the Developer
162 or its employees, agents or contractors in connection with the installation,
163 operation, maintenance, improvement or replacement of the Facilities, the
164 Developer shall promptly repair such damage at its own expense. In addition, if
165 the School District, its employees, contractors, or any of its agents are responsible
166 for damage to the Facilities or any of its component parts, the School District
167 shall pay for all reasonably required repairs to the Facilities and any reasonable
168 expense of diagnosing any failure incurred by Developer as a result of such
169 damage; provided however, that, except for damage arising from the gross
170 negligence or intentional misconduct of the School District, the School District's
171 liability under this sentence shall be limited to Developer's right to deduct the
172 amount of all such reasonably required repairs and reasonable expenses from any
173 and all amounts subsequently payable by the Developer to the School District
174 pursuant to this Agreement and excluding the Security Deposit payments outlined
175 in Section 11 of this Agreement. Developer shall provide the School District with
176 notice of the amount of such reasonably required repairs and reasonable expenses

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referenced in the preceding sentence (the "Developer Notice"). If the School District disputes whether such repairs are reasonably required or such expenses are reasonable, the School District shall notify Developer, including a summary of bases and reasoning for such dispute, within seven (7) days after the School District's receipt of the Developer Notice (the "School District's Notice"); provided, that if the School District does not dispute the amount set forth in the Developer Notice within such period, then such amount shall be deemed to have been agreed to by the School District. The parties shall promptly use their reasonable commercial efforts to resolve any dispute set forth in the School District's Notice, if any, by negotiation in good faith and in accordance with the provisions of this Section. If the parties are unable to resolve such dispute within ten (10) days after the Developer's receipt of the School District's Notice, the parties shall submit such dispute to an independent arbitrator mutually and reasonably agreed to by the parties (which arbitrator may be an engineer with experience repairing and installing solar facilities, an accountant that has not represented either party during the prior 36 months, or other party mutually agreed to by the parties). Such arbitrator shall be instructed to resolve the dispute as to the amount of such reasonably required repairs and reasonable expenses in accordance with the terms of this Agreement. The determination of such arbitrator shall be final and the costs of any such arbitration shall be split equally by the parties. During the pendency of any such dispute, the Developer shall be entitled to deduct the amount set forth in the Developer's Notice from any payments, fees or amounts payable by the Developer to the School District (to the extent permitted by the section), but shall hold the disputed amount of such deductions in escrow until such dispute is resolved. The Developer shall, at its sole expense, operate, maintain and repair the Facilities in accordance with all laws and regulations of any applicable governmental authority, the BED Agreement and this Agreement. The Facilities and all repairs, parts, accessories and improvements of any kind or nature furnished or affixed to the Facilities shall at all times be and remain the property of the Developer and its successors and assigns.

- 6. **Exposure to Sunlight.** The School District covenants that it will use its best efforts to not allow vegetation on its property to grow in a manner or initiate or conduct any activities, except those permitted pursuant to the terms of paragraph 12 below, that could reasonably diminish the exposure of the Panels to sunlight during daylight hours, while this License Agreement remains in effect.

- 7. **Use of Subcontractors.** Upon approval of the School District, which approval shall not be unreasonably withheld, conditioned or delayed, the Developer shall be permitted to license subcontractors or agents to perform any of its obligations under this Agreement, provided however that any third parties used be fully insured and that the use of such third parties shall not relieve the Developer of its obligations and responsibilities hereunder, and the Developer shall be responsible for the actions and performance of such third parties.

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8. **School District not to Interfere with the Facilities.** The School District shall not tamper with or undertake any maintenance or alterations to the Facilities without the express written permission of the Developer. The School District shall take reasonable measures necessary to ensure that the operation of the Premises or the School Building does not unreasonably impede, interrupt or prevent the generation and supply of electricity by the Facilities or damage or otherwise adversely impact the installation, operation and maintenance of the Facilities or the Developer's performance under this Agreement or the BED Agreement.
9. **Developer not to Interfere with the Operations of the School or School District.** Without the express written authorization of the School District, the Developer shall not undertake any alterations, repairs or improvements to the Facilities that may affect the operations of the School District or the School (other than those reasonably deemed necessary by Developer to address emergencies) or may impede or otherwise materially adversely impact School or School District operations. Developer shall take all reasonable measures necessary to ensure that the Facilities and the operation of the Facilities does not unreasonably affect, interrupt or impede School or School District operations.
10. **Cooperation in Securing Rebates, Tax Credits and other Economic Benefits.** The School District will cooperate with Developer in completing and filing such applications and other documents as are necessary to permit the Developer to receive rebates, tax credits and other economic benefits that are now or may hereafter become available to the Developer in connection with the Facilities.
11. **Term; Removal of the Facilities.** This Agreement shall commence upon execution and shall terminate on October 31, 2033 (hereinafter the "Agreement Term"). At the end of the Agreement Term or upon termination of this Agreement, the Developer, its successors or assigns shall sever, disconnect, and remove the Facilities and all of the Developer's other property from the Premises and the School Building. In addition, at the expiration of the Agreement Term or upon termination of this Agreement, the Developer, its successors and assigns shall promptly repair and restore any damage caused to the School Building resulting from the placement of the Facilities on the School Building and Premises or removal of the Facilities from the School Building and Premises, to the satisfaction of the School District. The Developer and its successors and assigns shall be liable for any other damage to the School Building or the Premises caused by the negligence of the Developer or its employees, contractors, agents, successors and assigns during such removal, repair or restoration. All removal, repair and restoration shall be at the sole expense of the Developer or its successors and assigns. On April 1, 2014, and on every April 1 thereafter until the expiration of the Agreement Term or this Agreement is terminated, the Developer shall pay the School District a security deposit equal to three percent

267 (3%) of the Developer's gross income for the sale of electricity produced by the
268 Facilities located on the Premises under the BED Agreement during the calendar
269 year immediately preceding the applicable payment date (such payments,
270 collectively, the "Security Deposit"). The Security Deposit shall be held by the
271 School District in an interest-bearing FDIC-insured account (the "Account") as
272 security for the performance of Developer's removal, repair and restoration
273 obligations under this Agreement. The amount of the Developer's Security
274 Deposit payment due on each April 1 pursuant to this Section 11 shall be reduced
275 by the amount of any interest accrued on the Security Deposit since the
276 Developer's prior Security Deposit payment, and any such interest shall be added
277 to the Security Deposit and held in the Account. The School District shall retain
278 the Security Deposit throughout the term of this Agreement. Any money received
279 by the School District as a Security Deposit payment shall be used by the School
280 District solely for the purpose of removing the Facilities from the School Building
281 and Premises and making any necessary repairs for damage caused either by the
282 removal of the Facilities or by the Facilities themselves. Any Security Deposit
283 funds not used for the removal of the Facilities or repair of the School Building or
284 Premises after the expiration or termination of this Agreement shall promptly be
285 returned to the Developer or its successors and assigns. Under no circumstances
286 shall the School District be liable for any damage done to the Facilities in the
287 event that the School District, after termination or expiration of this Agreement, is
288 responsible for the removal of the Facilities from the School Building and
289 Premises due to Developer's insolvency, bankruptcy or inability to pay.
290

291 12. **Improvements.** Without the express written consent of the Developer, the
292 School District shall not install or construct any improvements to the Premises or
293 School Building, excluding those projects set forth on Exhibit B, that adversely
294 impact the installation, operation or maintenance of the Facilities, the generation
295 or supply of electricity by the Facilities, or the Developer's performance or rights
296 under this Agreement or the BED Agreement. Notwithstanding the foregoing, the
297 Developer's consent shall not be required if: (a) the School District provides
298 Developer with at least 90 days prior written notice of such improvement; and (b)
299 the School District (after coordinating with the Developer in good faith) grants the
300 Developer, or its successors and assigns, all rights necessary for the modification
301 or relocation of the Facilities on the Premises, such that there is no reduction in
302 the electricity generation or capacity of the Facility or breach of the Developer's
303 obligations under the BED Agreement, and the Developer shall have the right to
304 deduct the amount of all reasonable costs and expenses incurred by Developer in
305 connection with or as a result of such School District improvements and such
306 modifications and relocations (including the value of lost energy per the terms of
307 the BED Agreement) from any and all amounts subsequently payable by the
308 Developer to the School District pursuant to this Agreement and excluding the
309 Security Deposit payment outlined in Section 11 of this Agreement. The amount
310 of these reasonable costs and expenses referenced in this Section 12 shall be
311 subject to the review and approval of the School District, which approval shall not

312 be unreasonably withheld, conditioned or delayed, prior to the deduction of any
313 payments, fees or amounts payable by the Developer to the School District. For
314 the avoidance of doubt, other than the Developer's deduction of costs and
315 expenses incurred from the amount of the Developer's subsequent payments to
316 the School District pursuant to this Agreement, the School District shall have no
317 liability for costs and expenses incurred by Developer pursuant to this Section 12.
318 If the nature of any School Board improvement is such that no accommodation,
319 modification or relocation of the Facilities can be made that is satisfactory to the
320 Developer, in the Developer's sole discretion, then the Developer may terminate
321 this Agreement, without being in breach, and remove the Facilities from the
322 Premises.
323

324 13. **Use.** The Developer will use only those areas of the roof and other areas in and
325 around the School Building outlined in the Installation Plan and any other areas
326 expressly agreed to by the School District (hereinafter the "Permitted Areas") for
327 the erection, installation, operation, maintenance, repair, replacement,
328 improvement and removal of the Facilities as well as for all other activities to be
329 conducted by the Developer, limited to, and in connection with the performance
330 of its obligations and exercise of its rights under the BED Agreement. The
331 Developer will comply with all laws, ordinances, orders, rules and regulations
332 (state, federal, local or School District), specifically including without limitation
333 all environmental and occupational, health and safety requirements relating to the
334 Developer's use or occupancy of the Permitted Areas and the Facilities and the
335 operation thereof, with respect to activities, conduct, safety and harassment.
336

337 14. **Ingress and Egress.** The School District shall provide and maintain all roads,
338 driveways and walkways that are now and may be located in and around the
339 School Building necessary for proper ingress and egress to and from, and
340 occupancy of, the Permitted Areas by the Developer. The Developer will
341 observe all speed limits and other rules and regulations established by the School
342 District with respect to such roads and driveways existing on the Premises.
343

344 15. **Fee.** On April 1, 2014, and on every April 1 thereafter until the expiration of the
345 Agreement Term or this Agreement is terminated, the Developer shall pay the
346 School District a license fee equal to 10% of the Developer's gross income for the
347 sale of electricity produced by the Facilities located on the Premises under the
348 BED Agreement at any time during the calendar year immediately preceding the
349 applicable payment date. Developer may, at Developer's option and in its sole
350 discretion, prepay any amounts due or to become due pursuant to this Agreement,
351 in whole or in part, at any time.
352

353 16. **License.** This Agreement is a license and does not constitute nor shall it be
354 construed as an easement. The Developer does not acquire any interest in the
355 Premises or the School building other than the licenses granted hereby.
356

- 357 17. **Temporary Construction License.** The School District shall provide, at no cost
358 to the Developer, a mutually satisfactory site in close proximity to the Permitted
359 Areas for the temporary storage and assemblage of materials to construct, erect
360 and install, expand, modify, replace and maintain the Facilities. Upon completion
361 of construction of the Facilities or any expansion, modification or repair thereof
362 that requires the use of a storage or assemblage area, the Developer, at its sole
363 expense, will remove all remaining materials from such site and will restore such
364 site as nearly as is reasonably possible to the condition in which it existed
365 immediately prior to the commencement of such activity.
366
- 367 18. **Personal Property.** All of the Facilities shall be and remain the personal
368 property of the Developer and shall not be or become fixtures, notwithstanding
369 the manner in which the Facilities is or may be affixed to the Premises or the
370 School building. The School District shall not suffer or permit the Facilities to
371 become subject to any lien, security interest or encumbrance of any kind, and the
372 School District expressly disclaims and waives any rights it may have in the
373 Facilities at any time and from time to time, at law or in equity. The Developer
374 shall maintain the Facilities in a good state of repair. The Developer may grant a
375 security interest in the Facilities and an assignment for purposes of security to its
376 lender or lenders, and the School District shall provide any consent and/or waiver
377 reasonably requested by any lender, consenting to such lender's rights in such
378 Property.
379
- 380 19. **Quiet Enjoyment.** The Developer shall have exclusive physical possession and
381 control of the Facilities. The School District covenants and agrees that the
382 Developer, provided it remains in compliance with its obligations under this
383 Agreement and the BED Agreement, shall lawfully and quietly have the non-
384 exclusive right to hold, occupy and enjoy the Facilities and the appurtenant rights
385 thereto in accordance with the terms hereof throughout the entire term of this
386 Agreement free from any claim of any entity or person of superior title thereto
387 without hindrance to, interference with the Developer's use and enjoyment
388 thereof, whether by the School District or any of its agents, employees or
389 independent contractors or by any entity, person or persons having or claiming an
390 interest in the Facilities. Without limiting the foregoing, the School District
391 agrees that it will not initiate or conduct activities that it knows or reasonably
392 should know may damage, impair or otherwise adversely affect the Facilities and
393 the operation and maintenance thereof.
394
- 395 20. **Environmental Matters.** The Developer shall not be liable for any past, present
396 or future contamination or pollution or breach of environmental laws, if any,
397 relating to the Premises or the School Building, unless attributable to the
398 Developer's activities, its employees contractors or agents. Accordingly: (a) the
399 Developer shall not be responsible for any work relating to (i) the existence, use,
400 transportation or treatment of Hazardous Materials, or (ii) the storage, handling,
401 use, transportation, treatment, or the disposal, discharge, leakage, detection,

402 removal, or containment of Hazardous Materials, and (b) the School District
403 agrees to assume full responsibility for (and protect, indemnify and defend the
404 Developer against, any liability for response costs for any contamination or
405 pollution or breach of environmental laws related to the Premises and the School
406 Building, unless and to the extent attributable to the Developer's activities. The
407 Developer may encounter Hazardous Materials when installing, servicing,
408 expanding, modifying or maintaining the Facilities. In the event the Developer
409 encounters any Hazardous Material at the Premises, the Developer shall promptly
410 cease any work in progress in an orderly, safe and efficient manner and inform
411 The School District of the nature and location of said Hazardous Materials. It
412 shall then be The School District's responsibility to eliminate or contain such
413 Hazardous Materials in a commercially reasonable manner in compliance with
414 law to allow The Developer to continue or finalize any work in progress.
415

416 21. **Assignment.** This Agreement and the rights of the Developer hereunder may be
417 assigned by the Developer upon written approval of the School District, which
418 approval shall not be unreasonably withheld, conditioned or delayed; provided,
419 however, that any such assignment will not relieve the Developer of any of its
420 obligations hereunder. With the written consent of the Developer, this Agreement
421 may be assigned by the School District provided, however, that any such
422 assignment will not relieve the School District of any of its obligations hereunder.
423

424 22. **Liability for Injury and Damage.** Developer shall defend, indemnify and hold
425 harmless the School District from any and all liability, loss, cost, damage or
426 expense sustained by reason of the injury or death of any person, and/or damage
427 to or destruction of any property arising from or caused by the Facilities and/or
428 caused by any act, omission, or neglect of the Developer or its subcontractors,
429 agents, servants, employees, invitees, visitors or guests, including reasonable
430 attorney's fees and other litigation expenses. The Developer shall obtain liability
431 insurance naming the School District an additional insured for this purpose in an
432 amount not less than \$1,000,000 as a condition of this Agreement. Developer
433 shall provide the School District with certificate(s) of insurance naming the
434 School District as an additional insured and evidencing the procurement of
435 insurance contemplated in this Section 22.
436

437 23. **Hold Harmless.** The Developer shall be liable for and hold harmless, indemnify,
438 and defend the School District from any other claims or actions brought by any
439 person or reason arising from the Facilities or out of the erection, installation,
440 operation, maintenance, repair, replacement, improvement and removal of the
441 Facilities as well as for all other activities to be conducted by the Developer,
442 limited to, and in connection with the performance of its obligations and exercise
443 of its rights under the BED Agreement throughout the duration of the term of this
444 Agreement.
445

446 24. **Clean Up.** The Developer shall clean up after each day's work during any

447 erection, installation, operation, maintenance, repair, replacement, improvement
448 or removal of the Facilities to the degree necessary to provide for entrance and
449 exit, public safety, fire lanes, and operation of all necessary School District
450 business. At the conclusion of any erection, installation, operation, maintenance,
451 repair, replacement, improvement or removal of the Facilities, the Developer shall
452 clean up and remove all equipment, excess materials, and wastes etc., and shall
453 promptly return the School Building and/or Premises to its prior condition
454 (excluding any approved construction or addition to the School Building or the
455 Premises by the Developer) as it existed prior to any work by the Developer.
456

457 25. **Revocation.** In the event of a default in the terms of this Agreement by either the
458 School District or the Developer, the other party may terminate this Agreement /
459 Revoke the License granted herein. Events that shall constitute a default under
460 this Agreement shall include, but not be limited to, a party's failure to perform or
461 comply with any material provision of this Agreement; an unauthorized
462 assignment, a party's insolvency or inability to pay debts as they mature, or an
463 assignment for the benefit of creditors; or if a petition under any foreign, state, or
464 United States bankruptcy act, receivership statute, or the like, as they now exist,
465 or as they may be amended, is filed by a party.
466

467 No party shall be in default under this Agreement unless and until it has
468 been given written notice of a breach of this Agreement by the other party and
469 shall have failed to cure such breach within thirty (30) days after receipt of such
470 notice. When a breach cannot reasonably be cured within such thirty (30) day
471 period, the time for curing may be extended by agreement of the parties for such
472 time as may be necessary to complete the cure, provided that the defaulting party
473 shall have proceeded to cure such breach with due diligence.
474

475 26. **Resolution of Disputes.** Any dispute that arises hereunder shall be resolved by
476 final and binding arbitration between the parties. The dispute shall be referred to
477 an arbitrator who is mutually agreed upon by the parties. The decision and award
478 of the arbitrator shall be final and binding on the parties, and judgment may be
479 entered upon it in any court having jurisdiction thereof. The cost of the arbitrator
480 shall be shared equally among the parties.
481

482 27. Following the installation and commission of the Facility, the Developer shall
483 provide the School District with access to an online monitoring portal for the
484 Facility, which teachers and students in the School District will be able to access.
485

486 28. **Miscellaneous provisions.**

487 a. **Applicable Law.** This Agreement shall be interpreted and governed by the
488 laws of the State of Vermont.
489

490 b. **Rules of Interpretation.** Titles and headings are included in this
491

492 Agreement for convenience only, and shall not be used for the purpose of
493 construing and interpreting this Agreement. Words in the singular also
494 include the plural and vice versa where the context requires.
495

496 c. Severability. In the event that any provisions of this Agreement are held
497 to be unenforceable or invalid by any court or regulatory agency of
498 competent jurisdiction, the School District and the Developer shall
499 negotiate an equitable adjustment in the provisions of this Agreement with
500 a view toward effecting the purposes of this Agreement, and the validity
501 and enforceability of the remaining provisions hereof shall not be affected
502 thereby.
503

504 d. Entire Agreement; Amendments and Waivers. This Agreement
505 constitutes the entire agreements between the Parties and supersedes the
506 terms of any previous agreements or understandings, oral or written. Any
507 waiver or amendment of this Agreement must be in writing. A Party's
508 waiver of any breach or failure to enforce any of the terms of this
509 Agreement shall not affect or waive that Party's right to enforce any other
510 term of this Agreement.
511

512 e. Further Assurances. Either Party shall execute and deliver instruments
513 and assurances and do all things reasonably necessary and proper to carry
514 out the terms of this Agreement if the request from the other Party is
515 reasonable.
516

517 f. Recordation. The Parties hereto acknowledge that this Agreement, or a
518 memorandum thereof, may be recorded in the Burlington land records.
519

520 ACKNOWLEDGEMENT OF ARBITRATION

521
522 **THE UNDERSIGNED ACKNOWLEDGE AND UNDERSTAND THAT**
523 **THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE. AFTER**
524 **SIGNING THIS DOCUMENT, WE UNDERSTAND THAT WE WILL NOT BE**
525 **ABLE TO OR BRING A LAWSUIT CONCERNING ANY DISPUTE THAT**
526 **MIGHT ARISE WHICH IS COVERED BY THE ARBITRATION AGREEMENT,**
527 **UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL OR CIVIL**
528 **RIGHTS. INSTEAD, WE AGREE TO SUBMIT ANY SUCH DISPUTE TO AN**
529 **INPARTIAL ARBITRATOR.**
530

531 IN WITNESS WHEREOF, the parties, as evidenced by the signatures of their
532 Duly Authorized Agents, do hereby execute this Solar Facilities License Agreement this
533 ____ day of _____, 201__.

534
535 IN PRESENCE OF:

ENCORE BTV SCHOOLS SOLAR II, LLC

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Witness

By: _____
Chad Farrell
Duly Authorized Agent

CITY OF BURLINGTON, VERMONT
SCHOOL DISTRICT

Witness

By: _____
Duly Authorized Agent

CITY OF BURLINGTON

Witness

By: _____
Miro Weinberger, Mayor

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Exhibit A

Installation Plan

[Attached hereto]

DRAFT

EXHIBIT A

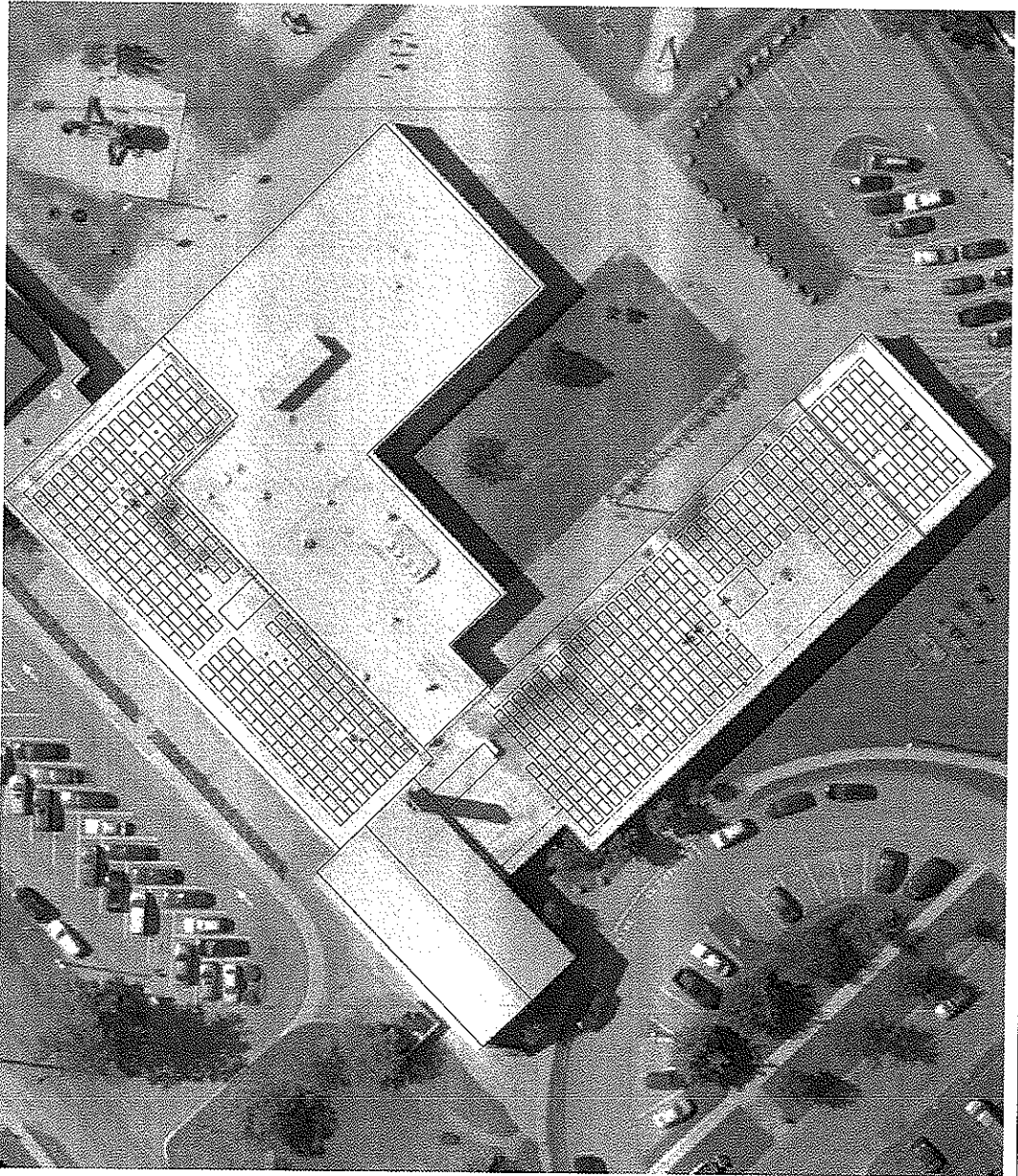
Solar Facilities License Agreement

This document provides the array layout and technology information for the proposed solar project at the Flynn School at 1645 North Avenue in Burlington, Vermont, which is the subject of this site license agreement.

The array layout is attached. This layout has been developed in close coordination with the Facilities and Operations staff of the Burlington School District, as well as staff at the Flynn School. The layout shows a 146.25 array on the newer portions of the Flynn School Roof. It should be noted that one 25watt panel has been omitted from the final design, resulting in a 146.0kW array.

Peck Electric, working with groSolar, has significant experience working on school buildings, including the two previously installed solar arrays at Burlington High School and CP Smith, and understand that protection of the existing facility is of paramount concern.

The system has been designed to function independently from the existing school electrical infrastructure. The array will be mounted on ballasted racking, resulting in no roof penetrations or bolting onto the existing roof structure. Inverters for the system will be located on the wall in the mechanical room of the school.



**PRELIMINARY DESIGN
NOT FOR
CONSTRUCTION**

- GENERAL NOTES:**
1. THIS CONCEPTUAL LAYOUT IS BASED ON AERIAL IMAGERY & INFORMATION PROVIDED BY THE CLIENT. DESIGN IS SUBJECT TO CHANGE PENDING FURTHER ANALYSIS, ENGINEERING APPROVAL & PERMITTING.
 2. SITE PREPARATION SUCH AS GRADING AND TRIMMING OR REMOVAL OF TREES MAY BE REQUIRED.

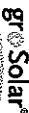
SYSTEM SUMMARY			
SITE AZIMUTH (°)	135.0		
ARRAY TILT (°)	5		
PV MODULE MANUFACTURER	CANADIAN SOLAR		
PV MODULE MODEL NUMBER	CS6P-250P		
STC RATING OF MODULE (W)	250		
ARRAY	# MODULES	STC POWER (MWDC)	
ARRAY 1	337	84.25	
ARRAY 2	248	62.00	
TOTAL	585	146.25	

GRAPHICAL SCALE (FEET)
0 25 50 100



FLYNN SCHOOL

164.5 NORTH AVENUE
BURLINGTON, VERMONT 05408



601 RIVER ROAD, SUITE 3
BURLINGTON, VERMONT 05401
802.537.4254
INFO@GRSOLAR.COM

DESIGNING CONCEPTS, PERMITS, ROOFING TO
INSTALL AND O&M. CONTACT US FOR
ANALYSIS AND ESTIMATION OF ROOF LOADS AND TO BE DETERMINED UPON
REQUEST BY COMPLETE SERVICES.

CONCEPTUAL LAYOUT

DATE: 01-07-2013
SCALE: 1/8" = 1'-0"

NO.	DESCRIPTION	DATE	BY
23	ROOF LOADS CHECKED	01-07-2013	
22	STAIRS, ELEVATOR SHAFTS	01-07-2013	
21	STAIRS, ELEVATOR SHAFTS	01-07-2013	
20	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-20-2012	
19	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-20-2012	
18	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-20-2012	
17	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-20-2012	
16	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-20-2012	
15	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-20-2012	
14	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-20-2012	
13	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-20-2012	
12	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-20-2012	

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EXHIBIT B

The following repairs, replacements, maintenance or construction are anticipated to the buildings and/or roofs of JJ Flynn Elementary School during the term of the Solar Facilities License Agreement that may have some manner of impact on the Solar Facilities and/or equipment/appurtenances attached thereto:

- 1) Replacement of roof at the termination of the roof's estimated twenty (20) year life. Roof was replaced in July 2012. Estimated date of roof replacement = 2032.

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