RESOLUTION RELATING TO

Sponsors: Councilors Shannon, Bushor, Aubin, Knodell: Bd. of Finance

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

CITY OF BURLINGTON

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

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RESOLUTION RELATING TO:

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

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

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; and

WHEREAS, on June 17, 2013, the Board of Finance recommended City Council Approval.

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 Administrative Officer of the City 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

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RESOLUTION RELATING TO:

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to the prior approval of the City Attorney and Chief Administrative Officer of the City, as appropriate.

JJ FLYNN ELEMENTARY SCHOOL

SOLAR FACILITIES LICENSE AGREEMENT

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

RECITALS

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

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

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

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

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

1. **Grant of License.** The School District hereby grants to Developer:

   a. a license to install, operate, maintain, improve and replace the Facilities on the roof of the School Building and to make such penetrations into the roof and the roof structure on the School Building and run wires and conduit from the Facilities to the BED electricity distribution system; and

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

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

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

subject to the terms of this entire Agreement.

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

5. **Maintenance of the School Building and the Facilities; Liability for Damage.** The School District will maintain the roof and the School Building in good condition and repair. The School District shall provide the Developer with at least 30 days prior written notice of any repair, maintenance or construction ("Maintenance") which could foreseeably 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 in any material respect (collectively, "Adverse Effects"); provided, however, in the event of an emergency requiring immediate Maintenance, the School District shall use commercially reasonable efforts to provide the Developer with as much notice as may be reasonably practicable under the circumstances. The School District shall coordinate with the Developer, or its successors and assigns, in good faith and shall take all commercially reasonable measures necessary to ensure that the Adverse Effects in connection with any such Maintenance are avoided or minimized. The Developer shall cooperate with the School District in relocating the Facilities temporarily, and Developer and its successors and assigns will be responsible for and/or pay for the entire cost of any required relocation (the "Relocation Costs"), during those periods of time in which such relocation is necessary to repair or replace the roof or perform any other necessary maintenance or construction to the School Building, provided that:

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

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

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

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

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

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

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

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.

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

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

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

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

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

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

15. **Fee.** 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 license fee equal to 10% of the Developer's gross income for the sale of electricity produced by the Facilities located on the Premises under the BED Agreement at any time during the calendar year immediately preceding the applicable payment date. Developer may, at Developer's option and in its sole discretion, prepay any amounts due or to become due pursuant to this Agreement, in whole or in part, at any time.

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

17. **Temporary Construction License.** The School District shall provide, at no cost to the Developer, a mutually satisfactory site in close proximity to the Permitted Areas for the temporary storage and assemblage of materials to construct, erect and install, expand, modify, replace and maintain the Facilities. Upon completion of construction of the Facilities or any expansion, modification or repair thereof that requires the use of a storage or assemblage area, the Developer, at its sole expense, will remove all remaining materials from such site and will restore such site as nearly as is reasonably possible to the condition in which it existed immediately prior to the commencement of such activity.

18. **Personal Property.** All of the Facilities shall be and remain the personal property of the Developer and shall not be or become fixtures, notwithstanding the manner in which the Facilities is or may be affixed to the Premises or the School building. The School District shall not suffer or permit the Facilities to become subject to any lien, security interest or encumbrance of any kind, and the School District expressly disclaims and waives any rights it may have in the Facilities at any time and from time to time, at law or in equity. The Developer shall maintain the Facilities in a good state of repair. The Developer may grant a security interest in the Facilities and an assignment for purposes of security to its lender or lenders, and the School District shall provide any consent and/or waiver reasonably requested by any lender, consenting to such lender's rights in such Property.

19. **Quiet Enjoyment.** The Developer shall have exclusive physical possession and control of the Facilities. The School District covenants and agrees that the Developer, provided it remains in compliance with its obligations under this Agreement and the BED Agreement, shall lawfully and quietly have the non-exclusive right to hold, occupy and enjoy the Facilities and the appurtenant rights thereto in accordance with the terms hereof throughout the entire term of this Agreement free from any claim of any entity or person of superior title thereto without hindrance to, interference with the Developer's use and enjoyment thereof, whether by the School District or any of its agents, employees or independent contractors or by any entity, person or persons having or claiming an interest in the Facilities. Without limiting the foregoing, the School District agrees that it will not initiate or conduct activities that it knows or reasonably should know may damage, impair or otherwise adversely affect the Facilities and the operation and maintenance thereof.

20. **Environmental Matters.** The Developer shall not be liable for any past, present or future contamination or pollution or breach of environmental laws, if any, relating to the Premises or the School Building, unless attributable to the Developer's activities, its employees contractors or agents. Accordingly: (a) the Developer shall not be responsible for any work relating to (i) the existence, use, transportation or treatment of Hazardous Materials, or (ii) the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection,

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

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

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

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

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

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

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

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

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

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

28. **Miscellaneous provisions.**

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

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

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

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

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

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

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

ACKNOWLEDGEMENT OF ARBITRATION

THE UNDERSIGNED ACKNOWLDEGE AND UNDERSTAND THAT THIS AGREEMENT CONTAINS AN AGREEMENT TO ARBITRATE. AFTER SIGNING THIS DOCUMENT, WE UNDERSTAND THAT WE WILL NOT BE ABLE TO OR BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MIGHT ARISE WHICH IS COVERED BY THE ARBIRATION AGREEMENT, UNLESS IT INVOLVES A QUESTION OF CONSTITUTIONAL OR CIVIL RIGHTS. INSTEAD, WE AGREE TO SUBMIT ANY SUCH DISPUTE TO AN INPARTIAL ARBITRATOR.

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

IN PRESENCE OF: ENCORE BTV SCHOOLS SOLAR II, LLC

_____
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

Exhibit A

Installation Plan

[Attached hereto]

EXHIBIT A

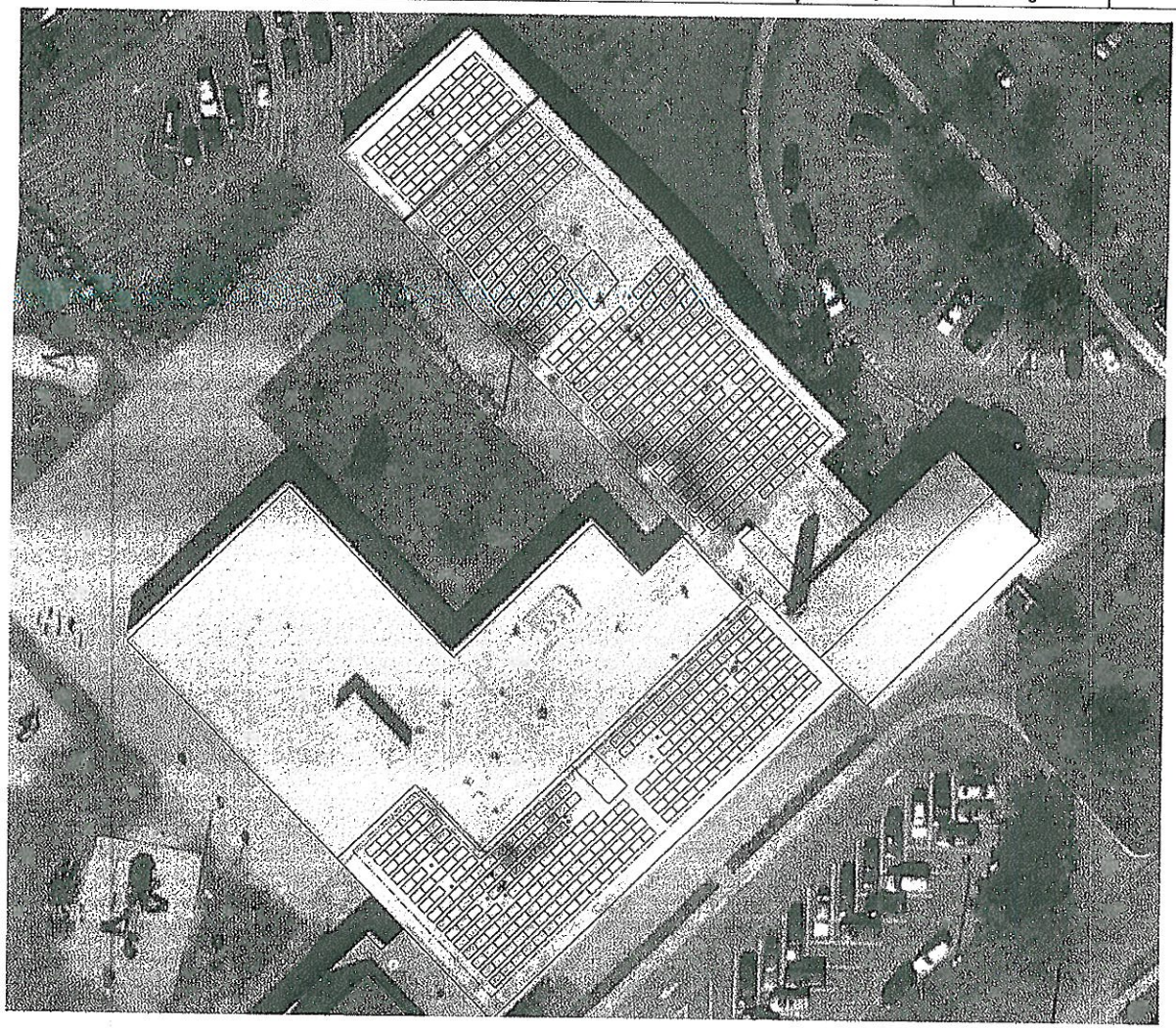
Solar Facilities License Agreement

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.



GRAPHICAL SCALE (FEET)
0 25 50 100

N

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 (kWDC)
ARRAY 1	337	84.25
ARRAY 2	248	62.00
TOTAL	585	146.25

ZONE	REV	DESCRIPTION	DATE	CHK BY	APV BY
	X3	ROOF OBSTACLES FURTHER DEFINED	01-07-2013		
	X2	ARRAY AZIMUTH ROTATED	01-02-2013		
	X1	SETBACKS REDUCED TO 6 FEET	12-20-2012		
	X0	CONCEPTUAL LAYOUT - NOT FOR CONSTRUCTION	12-12-2012		

REVISIONS

FLYNN SCHOOL

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BURLINGTON, VERMONT 05408

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WHITE RIVER JUNCTION, VERMONT 05001
802-674-4496
INFO@GROSOLAR.COM

CONCEPTUAL LAYOUT

SIZE D | DRAWN TPH | CHECKED TPH | DATE 01-07-2013 | SCALE SEE GRAPHICAL SCALE | SHEET 1 OF 1 | X3

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.