

## Real Estate License Agreement

This Real Estate License Agreement (the "Agreement") is made effective as of December 13, 2016 by and among BWC Buckmaster Pond, LLC (the "Lessee"), the Town of Dover, Massachusetts ("Town") and Hale Reservation, Inc. ("Lessor"), each a "Party" and collectively the "Parties".

**WHEREAS**, Lessor owns a certain property with an address of 211 Powissett Street, in Dover, MA, listed in the Town of Dover Assessor's database as Assessor's Map 19, Parcels 001, 002 and 004, ("the Property");

**WHEREAS**, Lessor will or has entered into a Site Lease Agreement ("Lease") by and between Lessor and Lessee, in substantially the same form as attached hereto as Exhibit B, agreeing to lease to Lessee certain parcels of land, which parcels are more fully and legally described in Exhibit A of the Lease, and depicted in the plan attached to the Lease as Exhibit A-1 (the "Leased Premises"); and Lessor has or will grant to Lessee a Solar Easement for access to a portion of the Property (the "Solar Easement Area") in connection with the use of the Leased Premises for a solar electric generating facility; said Solar Easement to be in substantially the same form as Exhibit F to the Lease;

**WHEREAS**, Lessee intends to use the Leased Premises for the purposes of installing, operating, maintaining, and removing a solar electric generating facility, which include all photovoltaic solar panels, mounting systems, inverters, transformers, integrators, all electrical lines and conduits required to generate, collect, distribute, and transmit electrical energy and additional utility lines, cables, conduits, transformers, wires, meters, monitoring equipment, communications, and other necessary and convenient equipment and appurtenances to such facility (the "Solar Facility");

**WHEREAS**, the Town formerly operated a municipal landfill on a portion of the Property and on the Leased Premises and Solar Easement Area, and pursuant to the Massachusetts Department of Environmental Protection ("MassDEP") landfill closure requirements, the Town is required to enter the Property, including the Leased Premises, to monitor and maintain the closed landfill and to conduct any corrective actions that may be required pursuant to Applicable Laws (as defined herein);

**NOW THEREFORE**, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessor, Lessee and the Town hereby agree as follows:

**GRANT OF LICENSE.** Lessor and Lessee grant to the Town and its Permitted Assignees, defined below, a license (the "License") for a period commencing on the Effective Date (as defined in the Lease) and ending upon expiration of the "Final Term," as defined in Lease, as may be extended by agreement of Lessor, Lessee and the Town (the "License Term"), to enter upon and travel over and across the Property,

Property, including the Leased Premises and the Solar Easement Area, by foot or vehicle from Dover Road or Powissett Street or any other Public Way abutting the Property, or from the abutting transfer station property owned by the Town as described in the Registry in Book 7358, Page 59, for the purpose of performing ongoing monitoring, maintenance, repair and any corrective actions required under its landfill closure permit and/or in accordance with the MassDEP regulations at 310 CMR 140 *et. seq.* and other Applicable Laws, provided that, to the extent feasible, the Town shall drive any vehicles around the Solar Facility and shall avoid travelling down any rows of the Solar Facility. Exercise of the foregoing license rights (the "License Rights") shall be at the Town's cost and expense and may be exercised by the Town and its employees, agents and contractors (each, a "Town Party") from time to time during the License Term. Any Town Party exercising any License Rights granted hereunder will provide Lessee and Lessor with at least twenty-four (24) hours' notice prior to entering onto the Property, except in the case of emergencies threatening injury to persons or property, in which case notice will be provided as soon as practicable under the circumstances.

## **1. NONINTERFERENCE**

(a) No Interference by the Town as Licensee (but not including the Town acting in its regulatory or emergency response capacity). Unless otherwise required to do so under the Applicable Laws, including landfill closure requirements mandated by the DEP, the Town shall not: (i) conduct or permit activities on, in, or about the Leased Premises that materially violate the Lessee's obligations under the Lease; (ii) conduct nor permit activities on, in or about the Leased Premises that are likely to damage, impair or otherwise adversely affect any portion of the Solar Facility or the cables and transmission facilities, (iii) take any action, or permit any action, which will materially interfere with the Lessee's rights under its Solar Easement (attached and incorporated hereto as Exhibit F to the Lease or otherwise interfere with the availability or accessibility of sunlight on or to the Leased Premises, (iv) take any action which will in any way materially interfere with the transmission of electric, electromagnetic or other forms of energy to or from the Leased Premise, or (v) take any action which will materially impair Lessee's access to the Leased Premises or the Lessor's access to its Property.

(b) No Interference by Lessee. Except as permitted under this License Agreement or in the Lease, Lessee will not conduct nor permit activities on, in or about the Leased Premises that are likely to damage, impair or otherwise adversely affect any ongoing municipal activities at the Leased Premises, including interference with the Town's obligations pursuant to any landfill closure requirements, nor shall the Lessee cause any damage or injury to the landfill cap.

## **2. ENVIRONMENTAL COMPLIANCE**

(a) Environmental Compliance. Lessee acknowledges that the Leased Premises is a capped landfill, formerly operated by the Town, and is subject to on-going monitoring and maintenance by the Town in accordance with Applicable Laws. The Lessee shall maintain the Solar Facility and any related improvements and the Leased Premises as required by Post Closure Use Permit No. BWP-SW36—X271387, dated September 22, 2016, a copy of which is attached as Exhibit E. The Town shall also

operate and maintain the Operation and Maintenance Responsibilities of the Lessee and the Town are set forth in more detail in Exhibit D to this Agreement. Lessee shall have a physical inspection of all of the Solar Facility and all of its improvements and the Leased Premises conducted by a Massachusetts State Licensed Professional Engineer quarterly during the first year following Commercial Operation and at least once every year thereafter during the term of the Lease to ensure that maintenance of the Leased Premises and operation of the Solar Facility are performed in a manner reasonably designed to maintain the structural stability of the landfill, and protect the landfill cap. On or before August 15 of each year, Lessee shall provide a written report to the Town and to the Lessor setting forth the findings of such inspection.

(b) The Town's Environmental Compliance and Environmental Representations and Warranties ("Environmental Representations and Warranties"). The Town shall make available to Lessee and the Lessor the Town's records regarding the landfill closure and permits. The Town represents and warrants that it is not aware of claims or actions by any party regarding alleged violations of any permits and it is not aware of any of any actions by any governmental authority alleging any violations of any permit or Applicable Laws. The Town further represents, warrants and covenants that, to the best of its knowledge, (i) Hazardous Substances (as defined herein) present on the Leased Premises or the Property to the extent known by the Town have been disclosed to Governmental Authorities (ii) the Town is in compliance with all Applicable Laws and Permits applicable to the closed landfill on the Property and the Leased Premises; (iii) there are no outstanding claims or disputes concerning the closed landfill on the Property, including the Leased Premises, and the Town has not received any notice from any person or Governmental Authority of any actual or alleged violations of any Applicable Laws with respect to the closed landfill, the Property or the Leased Premises. Throughout the term of this License Agreement, the Town shall be responsible for, and shall promptly conduct, any investigation and remediation as required by any Applicable Law into or concerning any and all Hazardous Substances or other environmental conditions not caused by Lessor or Lessee, that have occurred or which may occur on the Leased Premises or the Property including, but not limited to, the landfill located on the Property, and settling or subsidence thereof. The provisions of this Section shall survive the termination or expiration of this License Agreement.

(c) Lessee and the Town both agree that they shall not introduce or use any Hazardous Substances on, in or under the Property, including the Leased Premises in violation of any Applicable Laws. If any Party becomes aware of any such Hazardous Substances, such Party shall promptly notify the other Parties in writing of the type and location of such materials. If the Lessee becomes aware of any such Hazardous Substances during the construction, operation, maintenance and removal of the System, Lessee shall promptly notify the Town and the Lessor in writing of the type and location of such material.

### **3. INDEMNIFICATION.**

(a) The Lessor ("Lessor Indemnitor"), without waiving the protections afforded to charitable

corporations under the Massachusetts Torts Claims Act, G. L. c. 258, and the Lessee ("Lessee Indemnitor") each shall indemnify defend and hold harmless the Town and its officials, employees and contractors ("Town Indemnified Parties") from and against any and all claims, damages, expenses, liabilities, and losses suffered or incurred by any such Town Indemnified Parties to the extent arising from or out of claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring on the Property or the Leased Premises, or to the extent arising from any negligence or willful misconduct of such Indemnitor or its employees, contractors or invitees, except to the extent such claims, damages, expenses, liabilities or losses are caused by any of such Town Indemnified Parties. Notwithstanding the foregoing, neither the Lessor or the Lessee shall have any obligation to indemnify, defend or hold harmless the Town Indemnified Parties with respect to the Town's operation of the Leased Premises and the Property as a landfill and shall have no responsibility for any subsurface conditions or Hazardous Substances, existing on, in or under the Leased Premises as of the Effective Date of this License Agreement, or compliance by the Town with any Applicable Law(s) applicable to such conditions on, in or under all or any portion of the Leased Premises or Lessor's Property, except to the extent caused by Lessee or Lessor, as applicable, such cause including any failure by the Lessee to comply with its operations and maintenance responsibilities set forth in the PCUP or this Agreement.

(b) Except as the Town is precluded by Section 2 of Article 2 of the Amendments to the Massachusetts Constitution from pledging its credit without prior legislative authority, and without waiving the protections afforded the Town under the Massachusetts Torts Claims Act, G. L. c. 258, the Town agrees to indemnify, defend and hold harmless the Lessor and the Lessee, and their members, managers, officers, directors, employees, agents, contractors and invitees ("Lessor and Lessee Indemnified Parties") from and against any and all claims, damages, expenses, liabilities, and losses suffered or incurred by any such Lessor or Lessee Indemnified Parties to the extent arising from or out of the Town's exercise of its rights under this License Agreement, except to the extent caused by the negligence or intentional acts of such Lessor and Lessee Indemnified Parties. Nothing herein shall be construed to impose on any Party any liability for indirect, consequential, punitive or other special damages.

#### **4. INSURANCE.**

(a) Waiver of Subrogation. To the extent permitted by law and the Parties' insurers, the Parties waive any right to recover against the others on account of any and all claims one party may have against the others to the extent such claims have been paid through an insurance recovery. All such policies shall be endorsed to recognize such waiver of claims and subrogation. This Section shall not preclude recovery of the amount of any claim that is in excess of the amount recovered through insurance.

(b) Insurance. The Town shall procure and maintain at its sole cost and expense commercial general liability insurance in connection with its operations at the Property and the Leased Premises

and shall procure and maintain at its sole costs and expense, and provide evidence to Lessee and Lessor of, the following insurance:

- (i) Commercial General Liability, in an amount not less than Three Million Dollars (\$3,000,000.00) per occurrence for bodily injury and Three Million Dollars (\$3,000,000.00) per occurrence for property damage, with deductibles not to exceed Five Thousand Dollars (\$5,000) per occurrence (such limits may be maintained by using a combination of primary and excess liability policy limits);
- (ii) Workers' Compensation and Employer's Liability insurance in compliance with all applicable Massachusetts State laws and regulations and Disability Benefits insurance, if required by Applicable Law;
- (iii) Automobile Liability Insurance (if any vehicles are used by Lessee in the performance of this Agreement) in an amount not less than One Million Dollars (\$1,000,000.00) per person, per accident, for bodily injury and not less than One Million Dollars (\$1,000,000.00) for property damage per occurrence (such limits may be maintained by using a combination of primary and excess liability policy limits);
- (iv) Prior to authorizing any Town contractor to enter the Leased Premises, the Town shall cause each of its contractors to obtain or provide a Certificate of Insurance confirming that the contractor maintains Contractor's Pollution Liability coverage in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence, for bodily injury and not less than One Million Dollars (\$1,000,000.00) for property damage per occurrence, with a deductible not to exceed Fifty Thousand (\$50,000) per occurrence. This Contractor's Pollution Liability insurance policy requirement shall remain in effect until all monitoring, corrective action, and testing of the former landfill has been completed;
- (v) The Town shall furnish to the Lessee and to Lessor declaration pages for each such policy of insurance and upon request, a true and certified original copy of each such policy, evidencing compliance with the aforesaid insurance requirements. All such declaration pages, certificates and other evidence of insurance shall provide for the Lessor to be notified in writing thirty (30) days prior to any cancellation, nonrenewal or material change in said policies. Any lapse in any required insurance coverage shall be an event of default by the Town giving rise to the termination rights and other remedies specified in this License Agreement;
- (vi) With respect to insurance requirements during and construction or corrective action, The Town will require each contractor engaged by it for the construction to procure and maintain insurance coverage and limits commensurate with the work performed by each contractor, which at a minimum shall include Commercial General Liability, Auto Liability and Workers Compensation. The insurance coverage required by this Section shall not contain any exclusions for explosions, or collapses. Any policy deductibles shall be consistent with prudent industry practices.

The Commercial General Liability Insurance shall be endorsed to Lessee and Lessor as an additional insureds and shall be primary and noncontributory with Lessee's and Lessor's insurance. All policies of insurance described in this Section shall be primary policies not contributing with and not in excess of coverage that Lessor may carry and shall be issued by insurance companies with an A.M. Best rating of A- or better and that are licensed to do business in the State of Massachusetts.

**5. ASSIGNMENT.** Lessee may assign this License Agreement and the License Rights granted hereunder to any assignee of Lessee's interests under its Lease, to any successor in interest to the Solar Facility, and to any financing party of Lessee or its successors or assigns providing financing in connection with the Solar Facility (collectively, the "Permitted Assignees") and shall promptly notify the Town of any such assignment. Upon the written assumption of Lessee's obligations hereunder by any one or more of such Permitted Assignees, Lessee shall be relieved from its obligations and liability hereunder.

## **6. REPRESENTATIONS.**

(a) Lessor's Representations. Lessor represents and warrants to the Town that Lessor has full power and authority to execute and deliver this License Agreement and to grant the License Rights granted hereunder for the Leased Premises at the Property.

(b) Lessee's Representations. Lessee represents and warrants to the Town that Lessee has full power and authority to execute and deliver this License Agreement and to grant the License Rights granted hereunder pursuant to its Site Lease Agreement between Lessee and Lessor for the Leased Premises at the Property.

(c) The Town's Representations. In addition to its Environmental Representations and Warranties set forth above, the Town represents and warrants to Lessor and to Lessee that the Town has full power and authority to execute and deliver this License Agreement and to comply with each of its obligations set forth and agreed to in this License Agreement.

**7. DEFAULT.** In the event of any default or failure to perform any obligation under this License Agreement, the non-defaulting Party shall give the alleged defaulting Party written notice thereof, which notice shall include in reasonable detail the facts pertaining to the default and specify the method of cure. The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement (and any of the following events, before the expiration of the applicable grace period, if any, specified below, is referred to as a "Default") on the part of the applicable Party:

(a) The failure or omission by any Party hereto to observe, keep or perform any material terms, agreements or conditions set forth in this License Agreement, and such failure or omission has continued for thirty (30) days after written notice from the other Party (or such longer period reasonably required to cure such failure or omission up to a maximum cure period of 30 additional days if such failure or omission cannot reasonably be cured within such thirty (30) day period provided that the breaching Party commences the effort to cure within such thirty (30) day period and the cure is diligently and continuously pursued by the defaulting Party);

(b) Any representation or warranty made by a party in this Agreement is false or misleading

in any material respect when made or when deemed made or repeated.

**8. REMEDIES FOR EVENT OF DEFAULT.** If at any time an Event of Default has occurred and is continuing, the non-defaulting Party shall have the right to (i) terminate this License Agreement, upon thirty (30) days' written notice to the defaulting party, (ii) suspend performance due to the defaulting Party under this Agreement, and (iii) exercise all other rights and remedies available at law or in equity to the non-defaulting Party. Each Party agrees that it has a duty to exercise commercially reasonable efforts to mitigate damages that it may incur as a result of the other Party's default under this License Agreement.

**9. REMEDY FOR REMOVAL OF SOLAR FACILITY.** The Lessee and the Town understand and agree that to the extent that the Town requires that all or any portion of the Solar Facility is removed in order for the Town to (i) fulfill its obligations under any Permits required for the landfill or landfill closure or any Operation and Maintenance Responsibilities requirements for the landfill (Exhibit D), (ii) comply with Applicable Laws relating to the subsurface conditions within the Leased Premises, or (iii) implement monitoring of any pre-existing Hazardous Substances, the Town shall be responsible for the cost of any repair of any physical damage to the Solar Facility caused by the Town, including any cost of any such removal of the physical structure and re-installment thereof necessitated by the Town's compliance with Applicable Laws, up to and not to exceed the cumulative value of the net metering credits received by the Town minus the payment to the Lessee for said metering credits for the calendar year immediately preceding the date plus the value of the payment due in the calendar year of the removal event as outlined in the Payment in Lieu of Taxes (PILOT) agreement executed between the Town and Lessee.

**10. DEFINITIONS.**

"Applicable Law" means, with respect to any Person, any constitutional provision, any law, statute, rule, or regulation, including Environmental Laws, any tariff, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, or franchise, any permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Environmental Laws" means, any federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (A) pollution, (B) the protection or regulation of human health, natural resources or the environment, (C) the treatment, storage or disposal of Hazardous Substances, or (D) the emission, discharge, release or threatened release of Hazardous Substances into the environment, or (E) this disposal recycling, transfer or transportation of solid waste or the regulation of a Solid Waste facility including (1) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA") (41 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act, as amended ("RCRA") (42 U.S.C. § 6901 et seq.), and the

Toxic Substances Control Act, as amended ("TSCA") (15 U.S.C. § 2601 et seq.); and (2) the Massachusetts Hazardous Waste Management Act (M.G.L. c. 21C), the Massachusetts Oil and Hazardous Material Release Prevention and Response Act (M.G.L. c. 21E), and the Solid Waste Facilities Act (M.G.L. c. 21H).

"Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

"Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"Hazardous Substance" means any hazardous or toxic substances, materials and wastes which are regulated or are classified as hazardous or toxic by any Governmental Authority having jurisdiction over the Leased Premises, including, but not limited to, those substances included in the definitions of "Hazardous Substances," "Hazardous Materials," "Toxic Substances," "Hazardous Waste," "Pollutant," "Pollution," or "Contaminant" in any federal, Commonwealth of Massachusetts, local or other Law pertaining to public or worker health, welfare or safety or the environment.

"Permit" means any federal, state or local registration, filing, notice, permit, authorization or approval given or required by any Governmental Authority to authorize or condition an action by any person with respect to the Leased Premises or the Lessor's Property.

## **11. ADDITIONAL PROVISIONS.**

(a) Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by national overnight courier, or personal delivery to the address of the parties set forth below, provided that any party may change the address to which future notices should be delivered by providing notice of such change of address to the other parties in accordance with the provisions of this section. Notices shall be deemed given upon delivery or refusal to accept delivery.

LESSOR:

Hale Reservation, Inc.  
80 Carby Street  
Westwood, MA 02090  
Attention: Executive Director  
781-326-1770

LESSEE:

BWC Buckmaster Pond, LLC  
c/o Blue Wave Capital, LLC  
137 Newbury Street  
Boston, MA 02116

TOWN:

Town Administrator  
P.O. Box 250  
Dover, MA 02030

(b) Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to choice of law provisions. In case any one or more of the provisions contained in this License Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this License Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. The section headings contained herein are for convenience of reference only and shall not be used to interpret or deemed to modify the substantive provisions hereof. This License Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument, constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all previous communications between the parties concerning the subject matter hereof, whether written or oral. Any dispute concerning this agreement shall be filed in the Superior Court for Norfolk County, Massachusetts.

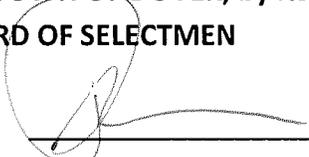
Signatures Appear on Following Pages

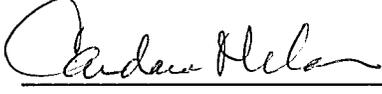
Acknowledged, agreed to and accepted:

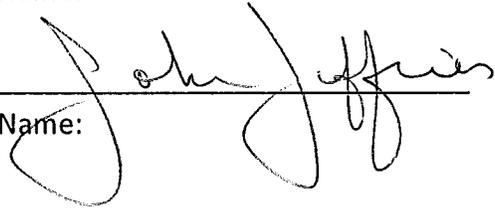
**BWC BUCKMASTER POND, LLC**

By:   
\_\_\_\_\_  
Authorized Signatory  
Title:

**THE TOWN OF DOVER, by its  
BOARD OF SELECTMEN**

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

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

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

**HALE RESERVATION, INC.**

By:   
\_\_\_\_\_  
Name: *Eric Arnold*  
Title: *EXECUTIVE DIRECTOR*