

LICENSE

This License (“License”) is executed as of the ____ day of _____, 2020, by and between the **TOWN OF BROOKLINE**, a municipal corporation existing under the laws of the Commonwealth of Massachusetts having a business address of 333 Washington Street, Brookline, Massachusetts 02445 (“Licensor” or the “Town”), and **SOLECT ENERGY DEVELOPMENT LLC**, (“Licensee” or “Solect”) a Massachusetts limited liability company, having an office at 89 Hayden Rowe Street, Hopkinton, Massachusetts, 01748.

WHEREAS, Licensor is the owner or holder of certain real property located at the Brookline Kirrane Aquatics Center, 46 and 60 Tappan Street, Brookline, Norfolk County, Massachusetts (the “Site”), as depicted in Exhibit C of the Agreement (as defined below).

WHEREAS, the Licensee intends to construct or cause to be constructed, installed, maintained, repaired and removed in accordance with the Agreement (as defined below) a Solar Photovoltaic Project (the “Project”) on the roof of and other portions of Site (the “Premises”) to the extent depicted on Exhibit A herein).

WHEREAS, Licensor and Licensee consents to the Project, as further described in the Power Purchase Agreement (the “Agreement”) for the Project dated the ____ day of _____, 2020, and subject to the terms and conditions set forth herein.

NOW, THEREFORE, pursuant to the Agreement, and for and in consideration of the promises and covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, Licensor and Licensee hereby agree as follows:

1. Premises and Related Rights. Licensor grants the non-exclusive privileges of entry, construction, and use of the Site and Premises, together with other privileges set forth in this License and in accordance with the terms and conditions set forth in the Agreement, and Licensee accepts the same, upon the terms and conditions hereinafter. Licensor hereby also grants to Licensee, for a period co-terminus with the Agreement, a non-exclusive license to access the Project and the Premises across or through the Site and any surrounding or nearby premises owned or leased by Licensor, passage through which is necessary or convenient to install or gain access to the Project, provided same does not unreasonably interfere with any other activities of Licensor. Notwithstanding the foregoing, access to the Site for the installation of the Project shall be as further described in the Agreement.

2. Project Construction, Installation and Operation.

(a) Licensor hereby consents to the construction of the Project by Licensee on the Site, which includes solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. The Project shall be designed, engineered, and constructed in accordance with the standards, terms and conditions set forth in the Agreement.

(b) Licensee shall also have the right from time to time during the term hereof with reasonable care and subject to the standards, terms and conditions of the Agreement:

(i) to install and operate the Project on the Site;

(ii) to maintain, clean, repair, replace and dispose of part or all of any of the Project (in the case of replacement and disposal, with Licensor's written consent);

(c) Licensor acknowledges that the installation of all or a portion of the Project will require installation and physically mounting and adhering parts of the Project to the building, structure and fixtures appurtenant to the Site, and consents to such mounting or adhering, as applicable, provided the same is done in accordance with and subject to the terms of the Agreement. Should the installation, operation, cleaning, repair, replacement, disposal or removal of the Project cause damages to the Premises, Licensee shall be responsible to repair the Premises to its original condition, normal wear and tear excepted.

3. Project and Output Ownership.

(a) Licensor acknowledges and agrees that Licensee or one of its affiliates or assignees is or will be the exclusive owner and operator of the Project, and that all equipment comprising the Project shall remain the personal property of Licensee, or its successor in interest, and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. At the request of Licensee, Licensor shall make any necessary filings to disclaim the Project as a fixture of its respective Site, including in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Licensee. Licensee shall prepare and bear the costs of recording any necessary filings. Licensor's sole responsibility shall be to review the filings for accuracy and to execute the filings.

(b) Licensor acknowledges that Licensee is the exclusive owner of electric energy generated by the Project and owner of all environmental attributes and tax attributes attributable to the Project, according to the terms of the Agreement.

4. Representations and Warranties, Covenants of Town.

(a) Licensor's Title to Premises. Licensor represents that Licensor has good and lawful title to the Site and that, so long as Licensee is not in default under the Agreement, beyond all applicable notice and cure periods, Licensor covenants that Licensee shall have license to use of and access to the Site and the Premises for the purposes set forth herein and in the Agreement without hindrance to or interference with or molestation, throughout the term of this License, in accordance with the terms of the Agreement.

(b) No Interference With and Protection of Project. Other than the activities that Licensor presently conducts at the Site, and subject to requirements of Applicable Laws,

Licensor will not conduct discretionary activities on the Site that have a reasonable likelihood of causing material damage, impairment or otherwise materially and adversely affecting the Project.

(c) Utilities. Licensee shall be responsible for paying for Station Power during the term of this License. For purposes of this License, “Station Power” shall mean electric energy consumed in the start-up and operation of the Project, which is distinct from the alternating current output of the Project.

(d) Insolation. Subject to the requirements of Applicable Laws, Licensor shall not construct or permit to be constructed any structure on the Site and Premises that could materially and adversely affect Insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation other than those that may be emitted from the normal operation of the buildings presently located on the Site or from vehicular traffic. Licensee shall have permission to remove any such vegetation on the Site that impedes insolation to the Project, following express authorization from the Licensor, which shall not be unreasonably withheld, conditioned, or denied and consistent with section 13 (b) of the Agreement, Licensor agrees to reimburse Licensee for costs incurred to remove any such vegetation on the Site.

(e) Notice. Each Party shall notify the other within twenty-four (24) hours following the discovery by it of any material malfunction of the Project or interruption in the supply of electricity from the Project. Each Party shall designate and advise the other Party of personnel to be notified in the event of such an emergency. Licensor shall have no duty or obligation to monitor, observe, or check upon the Project or its operation; Licensor shall have the right, but not the obligation, to address any emergency condition arising from the Project that Licensor in good faith believes presents or will likely present a threat to public health and safety; and any good faith failure of Licensor to provide the notification required in this paragraph shall not constitute a default or breach of the Agreement by Licensor.

(f) Agreement. Any representation, warranty, or covenant of Licensor with respect to this License in the Agreement is incorporated as if fully set forth herein.

5. Representations and Warranties, Covenants of Licensee.

(a) Hazardous Materials. Rights and obligations with respect to Hazardous Materials are set forth in the Agreement.

(b) Regulatory Status. Licensee represents and warrants that it is not a public service company, electric company, or electric distribution company as defined under the laws of the Commonwealth of Massachusetts.

(c) Agreement. Any representation, warranty, or covenant of Licensee with respect to this License in the Agreement is incorporated as if fully set forth herein.

6. Term and Termination. The term of this License shall be coterminous with the Agreement (the “Term”), including any extensions thereof. Upon expiration or earlier

termination of the Agreement, unless the Agreement is extended by agreement of the Parties in accordance with any terms allowing for the same, and notwithstanding the 60 day removal time period in the Agreement, Licensee shall remove the Project and any part thereof, at Licensee's expense, within 90 days, and extended if necessary due to seasonal or force majeure event(s), and shall repair any damage caused by the Project or its removal, except for normal wear and tear, and Licensor shall allow Licensee access to the Site and Premises for such purposes. Should the Parties agree to transfer Project ownership pursuant to the Agreement, Licensee will not remove the Project from the Premises.

7. **Compliance.** The use of the Site during the term hereof shall at all times comply with the terms of this License, the Agreement, and all applicable laws, statutes, building codes, ordinances, rules and regulations.

8. **Existing Matters.** This License is subject to all covenants, rights-of-way, and other matters of record of the Site Area.

9. **Indemnity.** Licensee shall defend, indemnify and hold Licensor harmless from and against any and all claims, actions, demands, costs, expenses (including reasonable attorney fees) or liabilities (collectively, "Liabilities") actually incurred by the Licensor as a result of damage to persons or property caused by the negligent acts and omissions or intentional misconduct of Licensee, or any party acting by, through or under Licensee, only in exercising the rights granted under this License, exclusive of any Liabilities arising out of any negligent acts or omission of the Licensor, or any party acting by, through or under Licensor.

10. **Insurance.** Licensee shall maintain a general liability policy of insurance covering Licensee's activities on the Site as described in the Agreement.

11. **Taxes.** Responsibility for taxes shall be as described in the Agreement.

12. **Casualty or Condemnation.** In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated, and Licensee shall have the right to terminate this License without further obligation.

9. **Intentionally Omitted.**

10. **Recording.** This License need not be recorded, but Licensor and Licensee shall execute a recordable form Notice of License complying with Massachusetts law and satisfactory to Licensee.

11. **Assignment.** Except as provided in Sections 10(e) and 21(a) of the Agreement, which are expressly incorporated herein and made applicable to this License, neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this License, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed, except that without consent of Licensor, Licensee may assign its rights and obligations hereunder to an Affiliate of Licensee.

12. Miscellaneous.

(a) Licensor agrees to transfer the License to any successor in interest to the Project during the term, and successor shall accept the License for the remainder of the term. In addition, if Licensor were to revoke the License, Licensee shall be entitled to the Early Termination Amount, provided the revocation of the License was not due to a default of the Licensee.

(b) Waiver. No failure of any party to exercise any power given to such party hereunder or to insist upon strict compliance by any other party to its obligations hereunder and no custom or practice of the parties in variance with the terms hereof shall constitute a waiver of any party's right to demand exact compliance with the terms hereof.

(c) Amendment. The provisions of this Agreement shall not be amended in any manner except by a written instrument, duly executed by the parties hereto.

(d) Governing Law. This Agreement and all of the provisions hereof shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

(e) Agreement. Any matter not expressly addressed herein shall be controlled by the terms of the Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the Licensee has executed this Agreement effective as of the date first above written.

LICENSEE: SOLECT ENERGY DEVELOPMENT LLC, a Massachusetts limited liability company

By: James R. Dumas

Signature: _____

Title: Manager

LICENSOR: TOWN OF BROOKLINE

By: _____

Signature: _____

Title: _____

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this ____ date of _____, 2020 before me, the undersigned notary public, _____ proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose as, a _____

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ date of _____, 2020 before me, the undersigned notary public, personally appeared James R. Dumas, Manager of Solect Energy Development LLC, proved to me through satisfactory evidence of identification, which was _____ to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as Manager of Solect Energy Development LLC, a Massachusetts limited liability company.

Notary Public

My Commission Expires:

EXHIBIT A

DESCRIPTION OF SITE and ENCUMBRANCES

46 and 60 Tappan Street, Brookline, Massachusetts

The land and improvements thereon known as and numbered 46 and 60 Tappan Street, Brookline, Massachusetts, sometimes being known as the Kirrane Aquatics Center and described as follows:

Parcel 1:

A certain parcel of land situated in said BROOKLINE, and bounded and described as follows: northeasterly for Tappan Street ninety two and 51/100 (92.51) feet; northerly by a curved line with a radius of seventy five (75) feet at the junction of said Tappan Street with Sumner Road seventy five and 56/100 (75.56) feet; northwesterly on said Sumner Road by a line curving to the right with a radius of seven hundred and forty one and 78/100 (741.78) feet fifty and 8/100 (50.08) feet, and by a line curving to the right with a radius of two hundred and ninety five (295) feet forty three and 4/100 (43.04) feet; westerly on land belonging to the Estate of said Arthur W. Blake one hundred and forty four and 42/100 (144.42) feet; southerly on land of the Boston and Albany Railroad Company by two lines ninety six and 98/100 (96.98) feet, and ninety two and 87/100 (92.87) feet; and southeasterly on land of the Town of Brookline two hundred and eight and 83/100 (208.83) feet; containing 42,500 square feet. Said premises are shown on a "Plan of Land purchased by the Town of Brookline from Heirs of Arthur W. Blake, Brookline, Mass., January 14, 1903" by Alexis H. French, Town Engineer, recorded with the Norfolk County Registry of Deed as Plan No. 1617 in Plan Book 35.

For title, see Deeds to the Town of Brookline recorded with the Norfolk County Registry of Deeds in Book 941, Page 210 and Book 941, Page 212.

Parcel 2:

The lot of land formerly bonded to the Town of Brookline by John T. Davis bounded northerly by Tappan Street, easterly by land n/f occupied by the Boston and Albany Railroad Company, southerly n/f by the location of the Boston and Albany Railroad Company, and westerly by land n/f of Arthur W. Blake, containing 67,179 square feet, more or less.

For conveyance, see vote taken during a Special Town Meeting of Brookline on November 10, 1886 (registry reference not available).

The Premises for the Project includes locations where solar equipment will be installed and accessed for maintenance for the term of the agreement, including the roofs, exterior and interior walls, through to the main electric room, and exterior areas of the Site. Site Plan below:

Site Plan – SED – Brookline Kिरrane Pool – 3802 – 288.35 kW DC – 200 kW AC
60 Tappan St, Brookline, MA 02445

