

**FIRST AMENDMENT TO
INTER-GOVERNMENTAL NET METERED POWER SALES AGREEMENT
BETWEEN
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
THE TOWN OF
CHATHAM**

This First Amendment ("First Amendment") to the Inter-Governmental Net Metered Power Sales Agreement ("Agreement") is made effective as of this 22nd day of October, 2013, by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation ("Seller") and the Town of Chatham ("Buyer"). The Seller and Buyer may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seller and Buyer entered into the Agreement effective as of July 5, 2011;

WHEREAS, Contractor requested certain changes to the Agreement in connection with the financing of the PV System; and

WHEREAS, Seller and Buyer wish to enter into the First Amendment to incorporate the requested changes to the Agreement.

NOW THEREFORE, in accordance with Section 11.2 of the Agreement, Seller and Buyer, intending to be legally bound hereby agree as follows:

ARTICLE I: DEFINITIONS

Terms not specifically defined in this First Amendment shall have the meanings assigned to them in the Agreement.

ARTICLE II: AMENDMENT TO AGREEMENT

2.1 Definitions.

(a) The definition of "Contractor" in Article I of the Agreement is hereby deleted and the following is substituted therefor:

"Contractor" means the third party entity, including successors and assigns in accordance with the EMS Agreement, that will design, procure, install, test, commission, own, operate and maintain the PV System pursuant to the EMS Agreement.

(b) Article I of the Agreement is hereby amended by inserting the following definition of "Governmental Charges" after the definition of "Governmental Authority":

“Governmental Charges” means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, leases, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, Distribution Company, or other similar entity, on or with respect to the Net Energy or this Agreement.

2.2 Term. Section 4.1 of the Agreement is hereby amended by deleting Section 4.1 in its entirety and substituting the following therefor:

4.1 Term. The term of this Agreement (the “Term”) commences on the Effective Date and ends at the earlier of 11:59 PM on: (i) the twentieth (20th) anniversary of the Commercial Operation date; or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement (the “Termination Date”). If Seller is the owner of the PV System upon the Termination Date, the Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements for up to one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing, provided, however, that any such extension shall not exceed twenty-five (25) years from the Effective Date. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

2.3 Invoice. The first paragraph of Section 5.1 is hereby renumbered Section 5.1(a) and the following new Section 5.1(b) is added to the Agreement:

(b) On or before the fifteenth (15th) day of each month following the month in which Buyer owes damages pursuant to Section 8.5(d) of the Inter-Governmental PDA, Seller shall invoice Buyer and provide a calculation with sufficient detail for Buyer to verify the calculation and the total amount due and payable for the previous month. Within twenty-one (21) days of the receipt of Seller’s invoice, Buyer shall pay Seller by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by Seller.

2.4 Governmental Charges. Clause (a) of Section 6.2 of the Agreement is hereby amended by inserting the following sentence after second sentence of clause (a):

“Governmental Charges include any payments made by Contractor to Host Town under the terms of any payment in lieu of taxes agreement or similar arrangement with Host Town.”

ARTICLE III: MISCELLANEOUS

3.1 Second Omnibus Amendment Agreement. A form of the Second Omnibus Amendment Agreement between Cooperative and Contractor is attached hereto as Exhibit A and shall be incorporated in Exhibit D to the Agreement.

3.2 Conflict in Documents. In the event the terms of this First Amendment may be interpreted to conflict with or be rendered ambiguous or require a lesser standard by the ratified terms of the Agreement, the terms of this First Amendment shall prevail.

3.3 Ratification and Confirmation. Except as expressly amended hereby the Agreement shall remain in full force and effect. Buyer ratifies and confirms that the Agreement is currently in full force and effect, as amended.


3.4 Counterparts; Scanned Copy. This First Amendment may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this First Amendment bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this First Amendment notwithstanding the failure or inability to produce or tender an original, executed counterpart of this First Amendment and without the requirement that the unavailability of such original, executed counterpart of this First Amendment first be proven.


[Signature Page to Follow]

IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of the date first above written.

SELLER

Cape & Vineyard Electric Cooperative, Inc.

By: 
Name: E. Mark Zielinski
Title: Treasurer

By: 
Name: John C. Checklick
Title: President

BUYER

Town of Chatham

By: _____
Name: _____
Title: Chair, Board of Selectmen

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have executed this First Amendment effective as of the date first above written.

SELLER

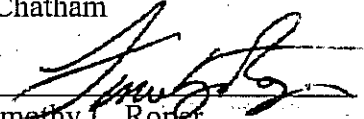
Cape & Vineyard Electric Cooperative, Inc.

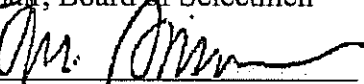
By: _____
Name: E. Mark Zielinski
Title: Treasurer


By: _____
Name: John C. Checklick
Title: President


BUYER

Town of Chatham

By: 
Name: Timothy L. Roper
Title: Chair, Board of Selectmen

By: 
Name: Leonard M. Sussman
Title: Vice Chairman, Board of Selectmen

By: 
Name: Jeffrey S. Dykens
Title: Clerk, Board of Selectmen

By: 
Name: Florence Seldin
Title: Board of Selectmen

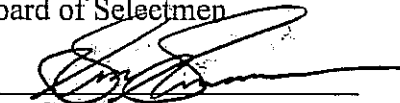
By: 
Name: Sean Summers
Title: Board of Selectmen

EXHIBIT A

Form of Second Omnibus Amendment Agreement

SECOND OMNIBUS AMENDMENT AGREEMENT

To

ENERGY MANAGEMENT SERVICE AGREEMENTS

Between

CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

and

**ACE of CAPE COD SOLAR I, LLC; ACE of CAPE COD SOLAR II, LLC; ACE of CAPE
COD SOLAR III, LLC; ACE of CAPE COD SOLAR V, LLC; ACE of CAPE COD
SOLAR VI, LLC; ACE-VINEYARD SOLAR I, LLC; ACE-VINEYARD SOLAR II, LLC;
ACE-VINEYARD SOLAR IV, LLC**

and

Pertaining to

**Eight Solar Facilities being installed at Host Town owned landfills and other sites as
designated in the Inter-Governmental Project Development Agreements**

Second Omnibus Amendment Agreement Executed on _____, 2013

This Second Omnibus Amendment Agreement to Energy Management Services Agreements for Solar Photovoltaic System (“EMS Agreements”) is dated as of this ___ day of _____, 2013 (“Second Omnibus Amendment”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“CVEC”); and ACE of Cape Cod Solar I, LLC (“ACE Solar I”), ACE of Cape Cod Solar II, LLC (“ACE Solar II”), ACE of Cape Cod Solar III, LLC (“ACE Solar III”), ACE of Cape Cod Solar V, LLC (“ACE Solar V”), ACE of Cape Cod Solar VI, LLC (“ACE Solar VI”), ACE-Vineyard Solar I, LLC (“ACE-Vineyard Solar I”), ACE-Vineyard Solar II, LLC (“ACE-Vineyard Solar II”) and ACE-Vineyard Solar IV, LLC (“ACE-Vineyard Solar IV”), each a Delaware limited liability company (individually, an “ACE Project Company” and collectively, the “ACE Project Companies”). CVEC and each ACE Project Company are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties”. Each Party to this Second Omnibus Amendment is executing this Second Omnibus Amendment for the sole purpose of amending the individual EMS Agreements to which that Party is a party.

Preliminary Statements

1. American Capital Energy, Inc. (“ACE”) through its Project Companies has previously been engaged in the development of eight separate photovoltaic solar electric generation facilities (individually, a “Facility” and collectively, the “Facilities”), with an expected aggregate installed capacity of approximately 16.1 MWs DC which will be constructed upon certain municipal land owned by each Host Town as described in Exhibit A to each EMS Agreement.
2. In order to finance the remaining development and construction of the Facilities and to monetize the federal tax benefits associated with the ownership of the Facilities, ACE has sold 100% of the membership interest in the ACE Project Companies to CF CVEC Owner, LLC, a Delaware limited liability company (“Contractor Parent” and “Project Owner”) and a subsidiary of Clean Focus Corporation (“CF”).
3. ACE has entered into an Engineering, Procurement and Construction contract and Operations and Maintenance Contract where it is contemplated that ACE will continue to engineer, design, and build the Facilities.
4. ACE intends to enter into an Operations and Maintenance Contract, where it will be contemplated that ACE will initially operate the Facilities after completion.
5. Project Owner has requested that certain changes be made to the EMS Agreements that were described in the Memorandum of Understanding (“MOU”) between CVEC and ACE executed on April 5, 2013, and April 22, 2013, respectively.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the Parties, and intending to be bound hereby, each Party agrees as follows:

1. Energy Management Service Agreement between Cape & Vineyard Electric Cooperative, Inc. and ACE of Cape Cod Solar I, LLC dated October 21, 2011 (“Barnstable EMS Agreement”);

Energy Management Service Agreement between Cape & Vineyard Electric Cooperative Inc., and ACE of Cape Cod Solar VI, LLC dated July 19, 2011 (“Brewster EMS Agreement”);

Energy Management Service Agreement between Cape & Vineyard Electric Cooperative, Inc. and ACE of Cape Cod Solar III, LLC dated July 19, 2011 (“Chatham EMS Agreement”);

Energy Management Service Agreement between Cape & Vineyard Electric Cooperative, Inc. and ACE of Cape Code Solar V, LLC dated July 19, 2011 (“Eastham EMS Agreement”);

Energy Management Service Agreement between Cape & Vineyard Electric Cooperative, Inc. and ACE-Vineyard Solar II, LLC dated June 28, 2011 (“Katama EMS Agreement”);

Energy Management Service Agreement between Cape & Vineyard Electric Cooperative, Inc. and ACE-Vineyard Solar IV, LLC dated June 28, 2011 (“Nunnepeg EMS Agreement”);

Energy Management Service Agreement between Cape & Vineyard Electric Cooperative, Inc. and ACE of Cape Cod Solar II, LLC dated June 19, 2011 (“Harwich EMS Agreement”);

Energy Management Service Agreement between Cape & Vineyard Electric Cooperative, Inc. and ACE-Vineyard Solar I, LLC dated August 4, 2011 (“Tisbury EMS Agreement”)

The above-listed EMS Agreements are hereby amended as follows.

- (i) The definitions of “Appraised Value”, “Contractor”, “Financier”, “Outside Construction Commencement Date” and “Outside Commercial Operation Date” set forth in Article I of each EMS Agreement are hereby deleted in their entirety and the following definitions are substituted therefor:

“Appraised Value” means the fair market value assigned to the PV System, factoring: (i) the life expectancy of the PV System (adjusted for reasonable depreciation); (ii) the Environmental Attributes; (iii) the current gross revenues

and reasonably estimated future power sales revenues (or the value of the energy and capacity to the owner or operator if used by the owner or operator) for the life expectancy of the PV System; (iv) any emission trading agreements, renewable energy certificate sales agreements and any other revenue producing agreements which may reasonably arise from the ownership and operation of the PV System for the life expectancy of the PV System; and (v) the present and reasonably expected estimated future operating costs (including, but not limited to, routine operation and maintenance, taxes and insurance) for the life expectancy of the PV System, all as determined by the Independent Appraiser.

“Contractor” means the third party entity, including successors and assigns in accordance with Section 16.1 of this Agreement, that will design, procure, install, test, commission, own, operate and maintain the PV System pursuant to this EMS Agreement.

“Financier” means any individual or entity providing money, extending credit or making an investment in either or both of the Project Owner and the Master Tenant for the purpose the development, installation and construction of the Facility, providing working capital, the repair, replacement, operation or maintenance, or ordinary business requirements of the Facility and its operation. In addition to any other individuals or entities which may qualify as Financiers, Seminole Funding Resources, LLC, Firstar Development, LLC and their respective successors and assigns shall be deemed for all purposes of this EMS Agreement to be Financiers.

“Outside Construction Commencement Date” means December 31, 2013.

“Outside Commercial Operation Date” means the earlier to occur of: (i) the date permitted under the construction deadlines set forth in 225 C.M.R. 14.05 (4) (k) 4; or (ii) December 31, 2014.

- (ii) There is added to the definitions in Article I of each EMS Agreement the following:

“Contractor Parent” means CF CVEC Owner, LLC, a Delaware limited liability company that owns all of the issued and outstanding membership interests of the Contractor.

- (iii) Section 3.2 of each EMS Agreement is deleted in its entirety and the following Section 3.2 is substituted therefor:

3.2 Term. The term of this Agreement (the “Term”) commences on the Effective Date and ends at the earlier of 11:59 PM on : (i) the twentieth (20th) anniversary of the Commercial Operation Date; or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement.

(iv) Section 3.3 (a), including subsection (i) through (xi) (inclusive) thereof, of each EMS Agreement is deleted in its entirety and the following Section 3.3 (a) is substituted therefor:

(a) Early Termination by User. User may terminate this Agreement:

(i) if the Contractor's Statement of Qualification (as defined in 225 CMR 14.02) from DOER expires prior to the Commercial Operation Date.

(ii) if Commercial Operation does not occur by the Outside Commercial Operation Date.

(v) Sections 3.3(b)(i) and 3.3(b)(ii) are deleted in their entirety and Section 3.3(b)(iii) is renumbered as 3.3(b)(i).

(vi) The last sentence of Section 3.3 (c) of each EMS Agreement is deleted in its entirety and the following sentence is substituted therefore, and a new final sentence is added:

"Special Event of Default" means as a result of gross negligence or willful misconduct on the part of Contractor, a material breach has occurred under any of the following provisions in this Agreement or any Additional EMS Contract.

(vii) Section 4.7 (i) is amended by adding a new sentence at the end thereof to read as follows:

Contractor's obligation to provide Decommissioning Assurance will terminate upon the Transfer Date defined in Section 13.5 of this Agreement.

(viii) Section 4.11 of each EMS Agreement is deleted in its entirety and the following Section 4.11 is substituted therefor:

4.11 Removal of the PV System Except as otherwise provided herein, Contractor shall, within one hundred twenty (120) days following the end of the Term and at Contractor's sole cost and expense, remove the PV System from the Premises and restore the Premises to its original condition, normal wear and tear excluded. Contractor shall expressly have any necessary access rights and ingress/egress rights of way during reasonable hours to carry out this obligation.

(ix) Section 5.1 (a) of each EMS Agreement is deleted in its entirety and the following Section 5.1 (a) is substituted therefor:

(a) Commencing on the Commercial Operation Date and continuing through the twentieth (20th) anniversary of the Commercial Operation Date or such date as which this Agreement may be earlier terminated pursuant to the provisions hereof,

Contractor shall make available to User, and User shall take delivery at the Point of Delivery, all of the Net Energy generated by the PV System.

- (x) Section 5.5 (b) of each EMS Agreement is deleted in its entirety and the following Section 5.5 (b) is substituted therefor:

(b) Contractor is responsible for all real property taxes, assessments, and all personal property taxes, use taxes and all other charges and fees assessed against the PV System, including any amounts paid with respect to any of the forgoing under any payment in lieu of taxes agreement (“PILOT”) or similar arrangements with Host Town. The Parties acknowledge and agree that within thirty (30) days of Contractor’s payment of such charges and fees, Contractor will invoice User for the same, and User will have ninety (90) days to reimburse or cause Host Town to reimburse Contractor for such charges and fees, including, without limitation, any PILOT payments.

- (xi) The following new Section 5.7 is added to each EMS Agreement:

5.7 Interference with PV System. If Contractor provides written notification to User reasonably certifying to User that Host Town is in breach of a non-monetary material obligation under the Inter-Governmental PDA which could reasonably be expected to have a material adverse impact on the PV System’s production of Net Energy (that is not the result of Host Town acting in its regulatory capacity or exercise of police powers), User shall notify Host Town of such breach within five (5) Business Days of receipt of notice from Contractor. If Host Town does not dispute the breach and the breach results in a Host Town event of default pursuant to Section 8.2(d) of the Inter-Governmental PDA, User shall seek damages from Host Town for the benefit of Contractor pursuant to Section 8.5(d) of the Inter-Governmental PDA. User shall, on a monthly basis, collect such damages and remit payment to Contractor on a monthly basis. Notwithstanding anything to the contrary in Section 14.1 (Dispute Resolution) of this Agreement, and in accordance with Section 8.5(c) of the Inter-Governmental PDA, if Host Town provides written notice disputing notice of a Host Town breach pursuant to Section 8.2(d) of the Inter-Governmental PDA prior to the expiration of Host Town’s cure period, the Parties, together with Host Town, shall attempt to resolve the dispute through mediation. The Parties and Host Town shall agree to a neutral and otherwise qualified mediator. If the Parties and Host Town fail to agree upon a mediator, the Parties and Host Town shall request that the American Arbitration Association, Boston, Massachusetts appoint a mediator. The Parties agree that the mediation shall occur on an expedited basis and shall last no longer than five (5) Business Days. The Parties will bear their own costs of mediation. If at the expiration of the mediation, Host Town maintains its dispute of a Host Town breach under Section 8.2(d) of the Inter-Governmental PDA, User acknowledges that Contractor may seek judicial enforcement of this Agreement in the sole venue of Barnstable County Superior Court, Massachusetts. In any judicial action, the “Prevailing Party” will be entitled to payment from the opposing party of its reasonable costs and fees, including, but not limited to,

attorneys' fees arising from the civil action. "Prevailing Party" means the party who most substantially prevails in its claims or defenses in the civil action. Contractor and User acknowledge that the Host Town is a necessary party to any civil action advancing allegations of a Host Town default under Section 8.2(d) of the Inter-Governmental PDA (the "Action"). Cooperative or Contractor will not oppose any motion, request or assertion by the Host Town, pursuant to Rule 24 of the Massachusetts Rules of Civil Procedure, seeking to intervene as a necessary party to the Action.

- (xii) Section 6.1 of each EMS Agreement is deleted in its entirety and the following Section 6.1 is substituted therefor:

6.1 Title to Environmental Attributes. All Environmental Attributes existing on or as of the Commercial Operation Date relating to the PV System or the Net Energy will be and remain property of Contractor (the "Existing Environmental Attributes"). Contractor shall have all right, title, and interest in and to any and all Existing Environmental Attributes that relate to the PV System or the Net Energy during the Term, and User shall have no right, title or interest in or to any such Existing Environmental Attributes. Environmental Attributes which arise due to the enactment of laws or regulations after the Commercial Operation Date ("New Environmental Attributes") shall be the property of the User. If during the ten year period following the commencement of SRECs being certified for the PV System or the Net Energy (the "SREC Opt-in Period" and as defined in DOER regulations), User has obtained a credit or other financial incentive for New Environmental Attributes that directly causes Contractor to receive less than the fixed auction price as set forth in 225 C.M.R. 14.05 (4) (e) for a Solar Carve-Out Renewable Generation Attribute ("SREC") associated with the electrical energy output of the PV System, as evidenced by Contractor to the reasonable satisfaction of User, User shall reimburse Contractor for the shortfall between the value of such SREC as demonstrated by Contractor and the fixed auction price. At the end of the SREC Opt-in Period, Contractor will share 50% of any SREC sales proceeds actually received by Contractor in excess of \$350.00/SREC based on the average price per SREC actually received by Contractor during the SREC Opt-in Period.

- (xiii) Section 8.1 of each EMS Agreement is hereby amended as follows. The words "discount factor of 3%" appearing in the 13th line of Section 8.1 (b) are hereby deleted in their entirety and the following words are substituted therefor:

"discount factor of 4%"

The last sentence of Section 8.1 (b) is hereby deleted in its entirety and the following sentence is substituted therefor:

"In the event that Contractor elects to repair or replace the PV System pursuant to this Section 8.1(b), Contractor shall be responsible for any production Shortfall that occurs during the repair/replacement period, except for PV System Loss

caused by User Misconduct, provided that Contractor is using Commercially Reasonable efforts to repair or replace the PV System and further provided that the Term of this Agreement shall be extended day for day for each day that a PV System Loss is caused by User Misconduct. Notwithstanding the foregoing, the Term of this Agreement shall not extend day for day beyond the twenty-fifth (25th) anniversary of the Effective Date of the Inter-Governmental PDA.”

The second and third sentences of Section 8.1 (c) are hereby deleted in their entirety and the following sentences are hereby substituted therefor:

“In the event that Contractor notifies User that Contractor has opted not to repair or replace the PV System, this Agreement will terminate 120 days after the receipt of such notice of termination, and Contractor shall be entitled to all proceeds of insurance with respect to the PV System in connection with such PV System Loss, provided however, proceeds paid on account of damages to the Premises shall be paid to User. Contractor shall however pay User an amount equal to the net present value of the Foregone User Benefit, using a discount factor of 4%, such amount not to exceed the replacement value of the PV System, except for PV System Loss caused by User Misconduct”

- (xiv) Section 4.3 of each EMS Agreement is hereby amended by inserting the following new subsections (c), (d) and (e) as follows:

(c) User covenants that User will not conduct activities on, in or about the Premises or knowingly allow the Host Town to conduct such activities, that have a reasonable likelihood of causing material damage or impairment to the PV System or otherwise adversely affecting the PV System or operation thereof. If User has knowledge or is notified by Contractor of any such conduct being taken or allowed by the Host Town, User shall be obligated to take all reasonable actions within User’s power to cause Host Town to cease taking or allowing such actions.

(d) Throughout the Term and any extensions thereof, User shall not knowingly allow the Host Town or any third party to interfere with the sun affecting the PV System. If User, either directly or through Host Town, becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Premises, User shall advise Contractor of such information and reasonably cooperate with Contractor in measures to preserve average levels of insolation at the Premises as they existed on the date of execution of this EMS Agreement, as amended. If User has knowledge or is notified by Contractor of any such conduct being taken or allowed by the Host Town, User shall be obligated to take all reasonable actions within User’s power to cause Host Town to cease taking or allowing such actions.

(e) User shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics’, labor or materialman’s lien), charge, security interest, encumbrance or claim on or with respect to the PV

System, or if within its power to prevent, the Premises (collectively, “Liens”) and agrees to promptly discharge any such Liens that attach to the PV System.

- (xv) Section 10.4 of each EMS Agreement is hereby deleted in its entirety and replaced with the following:

10.4 User’s Representation and Covenants regarding Inter-Governmental PDA and Inter-Governmental Cooperative Net Metered Power Sales Agreement. User represents to Contractor that the Inter-Governmental PDA, as amended and the Inter-Governmental PSA, as amended, between User and Host Town is in full force and effect and that no notices of default have been sent or received by User with respect to the Inter-Governmental PDA or Inter-Governmental PSA, nor to the present knowledge of User has any event or condition occurred which, with the passing of time or the giving of notice, would result in an event of default by User under the Inter-Governmental PDA or Inter-Governmental PSA. If User receives any notice or demand from Host Town under the Inter-Governmental PDA or Inter-Governmental PSA with respect to the Premises or the purchase of power from the PV System, User shall promptly but, in any event, in not less than five (5) Business Days, deliver a true and correct copy of the same to Contractor. User agrees to use its best efforts to cause Host Town to comply with or perform the obligations of Host Town under the Inter-Governmental PDA and Inter-Governmental PSA.

- (xvi) A new Section 10.5 of each EMS Agreement is hereby inserted as follows:

10.5 User Acknowledgment Regarding Host Town Estoppels. In accordance with Section 2.1(c) of the Inter-Governmental PDA, User assigns its rights and privileges in Host Town’s estoppels contained in Section (xvii) of the First Amendment to the Inter-Governmental PDA between User and Host Town to Contractor and acknowledges that these estoppels are made in furtherance of Contractor’s ability to enter into Financing Agreements (as defined in Section 16.2(a) of this Agreement) with the Financier.

- (xvii) Article XIII of each EMS Agreement is hereby deleted in its entirety and the following is inserted in replacement thereof:

ARTICLE XIII PV SYSTEM PURCHASE AND SALE OPTIONS

13.1 Grant of Purchase Option. For and in consideration of the payments made by User under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Contractor hereby grants User the right and option to purchase all of Contractor’s right, title and interest in and to the PV System and the Environmental Attributes on the terms set forth in this Agreement (the “Purchase Option”). User, in its sole discretion, shall have the right to exercise the Purchase Option: (i) upon the seventh (7th), tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the

Commercial Operation Date, (ii) upon a Contractor Event of Default pursuant to Section 9.3(c)(ii), or (iii) upon the expiration of the Term of this Agreement in accordance with Section 4.13 (User's Right to Acquire PV System), subject to the timing and conditions set forth in this Article XIII.

13.2 Timing of Purchase Option.

(a) User shall have sixty (60) Business Days from: (i) the seventh (7th), tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date; (ii) a Contractor Event of Default in accordance with Section 9.3(c)(ii); or (iii) the expiration of the Term of this Agreement, to provide a notice to Contractor requiring a determination of a purchase price in accordance with Section 13.3.

(b) Promptly following receipt of User's notice pursuant to this Section 13.2(a), Contractor shall make the PV System and all Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, available to User for its inspection during normal business hours.

13.3 Determination of Purchase Price.

(a) Within fifteen (15) Business Days of Contractor's receipt of a notice provided under Section 13.2(a), Contractor and User shall each propose an Independent Appraiser to determine the Appraised Value of the PV System. If Contractor and User do not agree and appoint an Independent Appraiser within such fifteen (15) Business Day period, then at the end of such fifteen (15) Business Day period, the two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Contractor and User. Such selection shall be final and binding on Contractor and User. An appraisal may be done only once for each Purchase Option date. If User elects to exercise the Purchase Option for multiple photovoltaic systems subject to one of the Additional EMS Agreements, then the Independent Appraiser selected shall be the Independent Appraiser for all the photovoltaic systems with respect to which User has then delivered written notice of its intent to exercise its Purchase Option under this EMS Agreement or one of the Additional EMS Agreements. The Independent Appraiser shall determine a valuation for all the photovoltaic systems then subject to valuation on an aggregated basis. If more than one photovoltaic system is then subject to valuation, the Appraised Value for each individual photovoltaic system shall be determined by taking the pro rata of each photovoltaic system size by MW compared to the total photovoltaic system size by MW of the photovoltaic systems then subject to valuation by the Independent Appraiser.

(b) The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the

Appraised Value in accordance with Section 13.3(c) (the "Preliminary Determination").

(c) Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Contractor and User, together with all supporting documentation that details the calculation of the Preliminary Determination.

(d) Concurrently with the delivery of User's delivery to Contractor of written notice pursuant to Section 13.2(a), User may request an independent engineer's review of the PV System, such review to be completed and delivered to the User and Contractor within forty-five (45) days of its request, if the following preconditions are met prior to such request for review:

(i) User has delivered to Contractor a statement with sufficient detail (satisfactory to Contractor in its reasonable discretion) to document User's basis for the belief that the PV System has not been properly maintained or has operational or equipment issues that are materially adversely different than would be expected for a photovoltaic system of that vintage in a comparable geographic location and utilizing comparable technology ("Deficiency Statement"). Any such Deficiency Statement must be based solely upon sufficient detail that was not a part of a prior Deficiency Statement unless evidence is presented as part of such Deficiency Statement that the cause of a prior issue was not repaired or otherwise remediated since the prior Deficiency Statement. For the avoidance of doubt, User is solely responsible for the costs of any independent engineer review after two (2) Deficiency Statements have been delivered pursuant to this Section 13.3(d)(i).

(ii) Provided User has delivered the Deficiency Statement, if the User has not previously delivered a request for an independent engineer's review in connection with the User's delivery of a written notice pursuant to Section 13.2(a) hereof, Contractor shall pay the reasonable costs of such Independent Engineer's review.

(iii) In the event the User has previously delivered a Deficiency Statement in connection with the delivery of a written notice pursuant to Section 13.2(a); and the second Deficiency Statement satisfies the requirements for a request after the first such request set forth in subsection (i) above; then the User and Contractor shall each pay half the reasonable costs of such independent engineer's review unless: the independent engineer determines that the PV System is operating and has been maintained within acceptable parameters for a system of its vintage in a comparable geographic location and utilizing comparable technology, in which case User is responsible for the full cost of such review.

(iv) Contractor shall have the right to approve the selection of the independent engineer by User, which consent shall not unreasonably be withheld, and Contractor shall have the right to approve the independent engineer's scope of work, provided that the conditions of such consent shall not unreasonably restrict the independent engineer's scope of work.

(v) Notwithstanding anything to the contrary herein, User shall have the right to conduct an independent engineering review of the PV System at its sole cost at any time throughout the Term.

(e) Contractor and User shall each have the right to object to the Preliminary Determination within thirty (30) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days after the expiration of such thirty (30) Business Day period, the selected Independent Appraiser shall issue its final determination (the "Final Determination") to Contractor and User, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination.

(f) Except in the case of fraud or manifest error, and subject to any allowable adjustment to purchase price as set forth in Section 13.4, the Final Determination of the selected Independent Appraiser shall be final and binding on the Parties. User shall have twenty-five (25) Business days from the date of the Final Determination to exercise the Purchase Option by providing written notice to Contractor. Once User delivers such notice to Contractor, such exercise shall be irrevocable.

(g) Applicable Final Determination Purchase Price.

(i) Regardless of anything to the contrary above, the final purchase price for the Purchase Option exercisable at the seventh (7th) anniversary of the Commercial Operation Date of the PV System shall be the greater of (A) the Appraised Value as determined by the Independent Appraiser in its Final Determination for such Purchase Option pursuant to Subsection 13.3(e) above, and (B) the value in the appraisal report of Novogradac & Company produced at or prior to Commercial Operation Date for all photovoltaic systems under this EMS Agreement and the Additional EMS Agreements, pro-rated to each photovoltaic system based upon such photovoltaic system's MW output as a percentage of the total MW output of all photovoltaic systems under this EMS Agreement and the Additional EMS Agreements.

(ii) The final purchase price for each Purchase Option exercisable on the tenth (10th), twelfth (12th) and fifteenth (15th) anniversary of the Commercial Operation Date of the PV System shall be the greater of (X) the Appraised Value as determined by the Independent Appraiser in its Final Determination for such Purchase Option date and (Y) the amount set forth on Exhibit C for the Purchase Option price for such PV System as of such Purchase Option date.

(h) Not later than thirty (30) days following the Commercial Operation Date of the last photovoltaic system subject to this EMS Agreement or the Additional EMS Agreements to reach Commercial Operation, Contractor shall deposit with User the amount of Forty Thousand and 00/100 Dollars (\$40,000). User shall retain this deposit and apply it to the User's share of all reasonable third party costs of Independent Appraisers and independent engineers for this PV System and the photovoltaic systems under the Additional EMS Agreements, and other reasonable third party costs directly related thereto, incurred in connection with the User's exercise of a Purchase Option. Subject to Subsections 13.3(d)(ii) and (iii) above, User shall be responsible for the first Forty Thousand Dollars (\$40,000) of all such third party costs. User shall not apply any of the deposit to overhead or any other internal costs, but only to third party costs.

13.4 Determination of Adjustment to Purchase Price. In the event the Independent Engineer's review does not conclude that the PV System is operating and has been maintained within acceptable parameters for a system of its vintage in a comparable geographic location and utilizing comparable technology, the User shall be entitled to a downward adjustment to the final purchase price. The downward adjustment shall be equal to the amount that would be required, as determined by the independent engineer's review to make the repairs or replacements necessary such that the PV System is within acceptable parameters for a system of its vintage in a comparable geographic location and utilizing comparable technology. If such a determination of required repairs or replacements is made by the independent engineer, in arriving at the final purchase price of the PV System, both the Appraised Value and the Exhibit C Proposed Buy-Out Amount then applicable on the Purchase Option date shall be reduced by the amount of such independent engineer's determination. Similarly, for the year 7 Purchase Option, each of the Appraised Value and the Novogradac value shall be reduced by the amount of such independent engineer's determination.

13.5 Transfer Date. The closing of any sale of the PV System (the "Transfer Date") pursuant to this Article XIII will occur as soon as practicable but no later than ninety (90) Business Days following the date of the notice provided to Contractor pursuant to Section 13.3(c). This Agreement shall terminate effective upon the Transfer Date.

13.6 Changes in Purchase Price Determination Methodology.

(a) In the event there is a change in applicable United States tax law, referencing in particular the Internal Revenue Code of 1986, as amended, and/or applicable Treasury Regulations and binding Revenue Rulings or Revenue Procedures issued pursuant thereto, or Federal case law to the specific effect, expressly allowing the purchase price of an asset to be determined for Federal tax purposes without reference to the Fair Market Value of such asset, then, at the election of User, the final purchase price with respect to the year 10, 12 or 15 Purchase Option, still subject to any adjustment pursuant to Section 13.4 above, shall be the applicable value stated in Exhibit C.

(b) In the event all of the original Members of the Project Owner, Master Tenant and entities that are Members of the Project Owner, Sponsor and Master Tenant, including, without limitation, Firststar Development, LLC, Clean Focus Corporation, Pacific Sequoia LLC and Lux Holdings, Inc., cease to retain a continuing interest directly in the PV System Assets through any ownership interest in an entity which, directly or indirectly, owns or leases the PV System Assets, then, at the election of User, the final purchase price of the PV System shall be only the Appraised Value of the PV System determined as of the time the written notice required pursuant to Section 13.2 (a) above is delivered by the User, and subject to any adjustment pursuant to Section 13.4.

13.7 Terms of PV System Purchase. On the Transfer Date (a) Contractor shall surrender and transfer to User all of Contractor's right, title and interest in and to the PV System, and the Environmental Attributes, and shall retain all liabilities arising from or related to the PV System and the Environmental Attributes prior to the Transfer Date, (b) User shall pay the final purchase price by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the PV System and the Environmental Attributes from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the PV System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the PV System, and the Environmental Attributes in User, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the PV System and the Environmental Attributes to User.

(xviii) The proposed Buy-Out Amount for Year 12 in each Exhibit C for each EMS Agreement is hereby amended to the following respective values:

The Proposed Buy-Out Amount for Year 12 in Exhibit C for Barnstable EMS Agreement shall be \$5,855,563 which replaces the value of \$6,010,000.

The Proposed Buy-Out Amount for Year 12 in Exhibit C for Brewster EMS Agreement shall be \$1,294,410 which replaces the value of \$1,340,000.

The Proposed Buy-Out Amount for Year 12 in Exhibit C for Chatham EMS Agreement shall be \$2,571,982 which replaces the value of \$2,640,000.

The Proposed Buy-Out Amount for Year 12 in Exhibit C for Eastham EMS Agreement shall be \$578,268 which replaces the value of \$600,000.

The Proposed Buy-Out Amount for Year 12 in Exhibit C for Harwich EMS Agreement shall be \$5,753,703 which replaces the value of \$5,920,000.

The Proposed Buy-Out Amount for Year 12 in Exhibit C for Katama EMS Agreement shall be \$1,512,932 which replaces the value of \$1,560,000.

The Proposed Buy-Out Amount for Year 12 in Exhibit C for Nunnepog EMS Agreement shall be \$2,486,607 which replaces the value of \$2,540,000.

The Proposed Buy-Out Amount for Year 12 in Exhibit C for Tisbury EMS Agreement shall be \$1,556,536 which replaces the value of \$1,600,000.

- (xix) Section 15 to each EMS Agreement is hereby amended by adding an additional clause to the Notices Section after the Contractor's address as follows:

All notices, requests, consents or other communications required or permitted to be given or made under the Agreement by User or Contractor shall be copied to CF CVEC Owner, LLC at the following address:

CF CVEC Owner LLC
c/o CF CVEC Management LLC
150 Mathilda Place, Suite 206
Sunnyvale, CA 94086
Attention: Stanley Chin

- (xx) Section 16.1(a) of each EMS Agreement is hereby amended by adding the following sentence after the second sentence:

"User acknowledges and consents that CF CVEC Owner One LLC, a Delaware limited liability company, CF CVEC Master Tenant One LLC, a Delaware limited liability company, Firststar Development, LLC, a Delaware limited liability company and Seminole Financial Services, LLC, a Delaware limited liability company are all permitted assigns of Contractor pursuant to Contractor's representation and warranty in Section 10.2(g) of this Agreement. Contractor shall deliver notice of such assignments to User in writing as soon as reasonably practicable. In no way shall User's consent to such assignments waive User's

right to negotiate in good faith the terms of User's written consent to collateral assignment of this Agreement requested by any such approved assignee."

Section 16.2 of each EMS Agreement is hereby amended by deleting the language before the first parenthetical and substituting the following language therefor:

"(a) Any Person or entity that has entered into an operating agreement, loan agreement, credit agreement, reimbursement agreement, note purchase agreement, capital contribution agreement or other document by any name having a similar import"

A new Section 16.2(d) of each EMS Agreement is hereby incorporated as follows:

(d) User agrees to give written notice to any Financier (of which User has written notice) upon User's receipt or delivery of a notice in accordance with Section 8.2 (Events of Default by Host Town) or 8.3 (Events of Default by Cooperative) of the Inter-Governmental PDA or Section 8.2 (Events of Default by Buyer) or Section 8.3 (events of Default by Seller) of the Inter-Governmental PSA.

(xxi) The following is added as a new Section 17.15:

17.15 Amendment of Inter-Governmental PSA and Inter-Governmental PDA. The User agrees to not amend, modify, assign or terminate the terms or provisions of the Inter-Governmental PSA or Inter-Governmental PDA without the prior written consent of the Contractor, which consent may not unreasonably be withheld or conditioned. Provided, however, that if the Contractor has not responded in writing to approve or reject any request for consent by the User with fourteen (14) business days of the User's delivery of such request, the Contractor shall be conclusively deemed to have given its consent.

(xxii) A new Article 18 is inserted into each EMS Agreement as follows and a new Exhibit K to each EMS Agreement is attached hereto as Exhibit A:

ARTICLE XVIII LIMITED POWER OF ATTORNEY

User agrees to execute, and at all times during the Term hereof maintain in full force and effect, a Limited Power of Attorney in form and substance substantially similar to Exhibit K attached hereto, and User agrees to comply with its obligations thereunder.

(xxiii) A new section 10.2(g) is added to each EMS Agreement:

"Contractor intends to make a permitted transfer to CF CVEC Owner One LLC, a Delaware limited liability company, CF CVEC Master Tenant One LLC, a Delaware limited liability company, Firststar Development, LLC, a Delaware

limited liability company and Seminole Financial Services, LLC, a Delaware limited liability (“Seminole”) company pursuant to Section 16.1(a) of this Agreement. Contractor agrees that in accordance with Section 16.1(a) of this Agreement, it shall require such assignee through a written instrument of assignment to assume all of Contractor’s obligations under this Agreement in writing. Upon completion of any such assignment, Contractor will execute, acknowledge and deliver such documents and assurances, as reasonably requested by User, to confirm such assignees’ ability to assume all of Contractor’s obligations under this Agreement. Notwithstanding the foregoing, Seminole shall have no obligation to assume all of Contractor’s obligations under this Agreement in a written instrument of assignment, provided: (i) the assignment to Seminole is solely for financing purposes or to effectuate Seminole’s role as Financier under this Agreement; and (ii) the written instrument of assignment expressly states that Contractor will remain the primary obligor under this Agreement.”

- (xxiv) Presentation to Host Town. User represents and warrants that a form of this Second Omnibus Amendment, including in particular but without limitation the form of Limited Power of Attorney attached as Exhibit A, has been presented to each Host Town and that the final form of this Second Omnibus Amendment will be included as an exhibit to the First Amendment to the Inter-Governmental PDA and the First Amendment to the Inter-Governmental PSA executed by User and each Host Town.
- (xxv) Conflict in Documents. In the event the terms of this Second Omnibus Amendment may be interpreted to conflict with or be rendered ambiguous or require a lesser standard by the ratified terms of each EMS Agreement, the terms of this Second Omnibus Amendment shall prevail.
- (xxvi) Ratification and Confirmation. Except as expressly amended hereby each EMS Agreement, as previously amended, shall remain in full force and effect. User ratifies and confirms that each EMS Agreement, as amended, is currently in full force and effect.
- (xxvii) Counterparts; Scanned Copy. This Second Omnibus Amendment may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Second Omnibus Amendment bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Second Omnibus Amendment notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Second Omnibus Amendment and without the requirement that the unavailability of such original, executed counterpart of this Second Omnibus Amendment first be proven.

IN WITNESS WHEREOF, the Parties have executed and delivered this Second Omnibus Amendment to the EMS Agreements as of the date first written above.

Cape & Vineyard Electric Cooperative, Inc.

By: _____
Name: E. Mark Zielinski
Title: Treasurer
P.O. Box 427

By: _____
Name: John C. Checklick
Title: President

Superior Court House
Barnstable, MA 02630
(508) 375-6643 (voice)
(508) 362-4136 (fax)

Each ACE Project Company is executing this Second Omnibus Amendment solely for the purpose of amending the EMS Agreement to which it is a party

ACE of CAPE COD SOLAR I, LLC

By: _____
Name:
Title:

ACE of CAPE COD II, LLC

By: _____
Name:
Title:

ACE of CAPE COD SOLAR III, LLC

By: _____
Name:
Title:

ACE of CAPE COD SOLAR V, LLC

By: _____
Name:
Title:

ACE of CAPE COD SOLAR VI, LLC

By: _____
Name:
Title:

ACE-VINEYARD SOLAR I, LLC

By: _____
Name:
Title:

ACE-VINEYARD SOLAR II, LLC

By: _____
Name:
Title:

ACE-VINEYARD IV, LLC

By: _____
Name:
Title:

EXHIBIT A TO SECOND OMNIBUS AMENDMENT AGREEMENT

EXHIBIT K

FORM OF LIMITED POWER OF ATTORNEY

LIMITED POWER OF ATTORNEY

[*EMS Reference*]

[*Date*]

KNOW ALL MEN BY THESE PRESENTS:

THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC., a Massachusetts cooperative corporation (the "Grantor"), does hereby make, constitute and appoint [____], a [____], and its successors and assigns (the "Attorney-in-Fact") as its true and lawful attorney-in-fact with full, sole and exclusive power and authority to act, for the purpose of performing the obligations and exercising and enforcing the rights of Grantor with respect to Sections 3.1 (*Sale and Purchase*), 3.2 (*Take-or-Pay for Net Energy Delivered to Point of Delivery*), 5.1 (*Accounting*), 5.2 (*Security Interest*) and 6.2(e) (*Buyer's Obligations - Net Metering*) of the Inter-Governmental Net Metered Power Sales Agreement, dated as of [____], as amended (the "Inter-Governmental PSA"), between Grantor and Host Town and Section 2.1 (*Leased Premises*) of the Inter-Governmental PDA, dated as of [____] as amended, (such rights, together with the rights of Grantor under other provisions of the Inter-Governmental PSA or Inter-Governmental PDA that are reasonably necessary and/or integral to the exercise or enforcement of the aforementioned rights and do not expand upon the aforementioned specifically enumerated rights, collectively, the "Specified Rights"), including, but not limited to, the power to execute all documents and instruments and taking all such other actions and executing any instrument or making such communications (including with the Host Town) which the Attorney-in-Fact may reasonably deem necessary or advisable in connection with such agreements; provided, however, that the Attorney-in-Fact's sole and exclusive power and authority to act as provided above shall apply only in situations in which Grantor fails to make any payment due under the EMS Agreement (defined below) within forty-five (45) Business Days after such payment is due (unless such payment is contested in good faith by Grantor or Grantor is complying with the dispute resolution provisions of Section 14.1 of the EMS Agreement and such dispute has not yet been resolved or determined pursuant to said section), or (b) Grantor becomes Bankrupt. Upon the Attorney-in-Fact being able to exercise its rights under this Limited Power of Attorney, thereafter and for the remainder of the period while Grantor is in default under the EMS Agreement, Grantor shall act solely and exclusively at the direction of the Attorney-in-Fact, and cease from otherwise acting, with respect to the Specified Rights.

This limited power of attorney is irrevocable and coupled with an interest. Further, Grantor hereby assigns, grants, pledges, conveys and transfers to the Attorney-in-Fact a lien on all the estate, right, title and interest of Grantor in and to the Specified Rights; provided, however, that in no event shall the Attorney-in-Fact have any right to become party to either the Inter-Governmental PSA or the Inter-Governmental PDA or directly foreclose upon Grantor's interest in the Specified Rights.

Any capitalized terms used but not defined herein shall have the meaning assigned to them in the Energy Management Services Agreement for Solar Photovoltaic System, dated as of [] (as amended, amended and restated, modified or supplemented from time to time, the "EMS Agreement"), by and among Grantor and the Attorney-in-Fact.

This limited power of attorney shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Grantor has caused this Limited Power of Attorney to be executed by its officer or representative thereunto duly authorized as of the date first written above.

CAPE & VINEYARD ELECTRIC
COOPERATIVE, INC.,

a Massachusetts cooperative corporation, as Grantor

By: _____
Name:
Title:

By: _____
Name:
Title:

Commonwealth of Massachusetts

County of _____

On _____, before me, _____, a Notary Public personally appeared, _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the Commonwealth of Massachusetts that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____ (seal)