
**AGREEMENT FOR PAYMENT IN LIEU OF TAXES
FOR REAL PROPERTY AND PERSONAL PROPERTY**

between

CONSTELLATION SOLAR NET METERING, LLC

and

THE TOWN OF UXBRIDGE

dated as of June 29, 2011

AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR
REAL PROPERTY AND PERSONAL PROPERTY

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR REAL PROPERTY AND PERSONAL PROPERTY (this "Agreement") is made and entered into as of June __, 2011 by and between Constellation Solar Net Metering, LLC ("Developer"), and the TOWN OF UXBRIDGE, a municipal corporation duly established by law and located in Worcester County, Commonwealth of Massachusetts (the "Town"). Developer and the Town are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party".

WHEREAS, Developer is a generation company engaged in the business of producing, manufacturing or generating electricity, renewable energy or related services or products for retail sale to the public, as defined in General Laws c.164, §1:

WHEREAS, Developer has entered into or will enter into a twenty (20) year lease with the owner of the fifteen (15) acre +/- parcel of land located at 67 Commerce Drive, Uxbridge, Worcester County, Massachusetts, as more particularly shown in Exhibit A (the "Property") and plans to build and operate a photovoltaic power plant with an expected nameplate capacity of approximately 2.5 megawatts (the "Project") on said Property

WHEREAS, it is the intention of the Parties that Developer make annual payments to the Town for the term of this Agreement in lieu of real and personal property taxes on the Project, in accordance with G.L. c.59, §38H (Acts of 1997 Chapter 164, Section 71(b), as amended) and the Massachusetts Department of Revenue regulations adopted in connection therewith;

WHEREAS, because both Developer and the Town need an accurate projection of their respective expenses and revenues with respect to the real and personal property that is taxable under law, the Parties believe that it is in their mutual best interests to enter into this Agreement establishing and stabilizing the payments that will be made with respect to all taxable real and personal property incorporated within the Project for the term of the Agreement;

WHEREAS, in addition to the within Agreement, the Parties have on this date entered into a Massachusetts Solar Net Excess Generation Credit Purchase Agreement, whereby certain utility credit transactions are stipulated as additional consideration for the terms of agreement set forth herein;

WHEREAS, the Parties intend that, during the term of the Agreement, Developer will not be assessed for any statutory real and personal property taxes to which it might otherwise be subjected under Chapter 59 of Massachusetts General Law, and this Agreement will provide for the exclusive payments in lieu of such real and personal property taxes that Developer (or any successor owner of the Project) will be obligated to

make to the Town with respect to the Project during the term hereof, provided, however, that the Parties do not intend for this Agreement to affect any direct payments for services provided by the Town to the Project, including but not limited to, water and sewer services, betterment assessments, and similar payment obligations not in the nature of real or personal property taxes or substitutes for such taxes that Developer is otherwise obligated to pay the Town;

WHEREAS, in consideration of the recitations set forth above, the Town is authorized to enter into this Agreement with Developer, provided the payments in lieu of real and personal property taxes over the life of the Agreement are expected at inception to approximate the property tax payments that would otherwise be required under G.L. c.59 based upon the full and fair cash valuation of the Project; and

WHEREAS, the Parties have reached this Agreement after good faith negotiations.

NOW THEREFORE, in exchange for the mutual commitments and other good and valuable consideration, including the terms and conditions of the Massachusetts Solar Net Excess Generation Credit Purchase Agreement executed by the Parties in conjunction herewith, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Payment in Lieu of Real and Personal Property Taxes. Developer agrees to make payments to the Town in lieu of real and personal property taxes on and after the Completion Date (defined below) for a period of twenty (20) consecutive years, commencing with fiscal tax year 2012 (the first quarterly payment date being February 1, 2012), and ending with fiscal tax year 2032 (the last quarterly payment date being November 1, 2031), in the amounts per year in Exhibit B. Each annual payment will be paid to the Town in four (4) equal quarterly installments on or before August 1, November 1, February 1 and May 1 of each fiscal tax year during the term of this Agreement and the annual payment amount and payment date will be noted on a quarterly bill issued by the Town to the Developer. Except to the extent that Paragraphs 2, 3 and 4 of the Agreement provide otherwise, Developer agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor or reduction in the Town's tax rate, which factors have been anticipated by the Parties and are reflected in Exhibit B, and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor or increase in the Town's tax rate, which factors have been anticipated by the Parties and are reflected in Exhibit B.

2. Improvements or Additions, Retirements. To the extent that Developer, at its sole option, makes any capital improvements to the Project or adds additional personal property on or after the Project achieves its commercial operation date, but in no event

later than December 31, 2011 (the "Completion Date"), the remaining payments in lieu of taxes will be increased as described in Paragraph 3. To the extent that Developer, at its sole option, retires or removes any capital improvements from the Project or retires or removes any personal property from the Project on or after the Completion Date, the remaining payments in lieu of taxes will be decreased as described in Paragraph 3.

Notwithstanding the foregoing, consistent with applicable Massachusetts Department of Revenue regulations, only the addition of equipment on or after the Completion Date that adds value to the Project (not including replacement of existing equipment, machinery and pollution control equipment that is exempted from local property taxes) will lead to an increase in the payments in lieu of taxes due under this Agreement. No additional payments in lieu of property taxes will be due or required for (i) replacement of personal property or equipment or machinery that is non-functional, obsolete or is replaced solely due to wear and tear or casualty or as part of scheduled or unscheduled maintenance or (ii) pollution control equipment that is exempted from taxation by the provisions of General Laws Chapter 59, section 5 (44) or other applicable laws or regulations in effect from time to time or (iii) equipment installed as required by or in response to any statute, law, regulation, consent decree, order or case mandating additional control of any emission or pollution.

3. Calculation of Adjustment. Except as otherwise provided in Paragraph 2, to the extent that on or after the Completion Date, Developer makes capital improvements to the Project or adds new personal property or equipment to the Project that would increase the value of the Project under applicable Massachusetts Department of Revenue regulations, the remaining annual payments in lieu of taxes under this Agreement will be increased by the product of the then current commercial property tax rate per \$1,000 multiplied by the actual cost of the capital improvement or additional personal property. For example, if the actual cost of the capital improvement is \$200,000, then the cost of \$200,000 would be multiplied by the then current applicable commercial property tax rate per \$1,000 resulting in an additional annual payment in lieu of taxes. To the extent that on or after the Completion Date, Developer retires property from the Project, the remaining annual payments in lieu of taxes under this Agreement will be decreased by the product of the then current commercial property tax rate per \$1,000 multiplied by the depreciated original cost (net book value) of such retired property. Except as otherwise provided in Paragraph 2, in the event that new property or equipment added to the Project replaces existing property or equipment, the depreciated original cost (net book value) of the existing property or equipment will be deducted from the actual value of the new property or equipment for purposes of the payment in lieu of tax adjustment.

4. Inventory. Within six (6) months after the Completion Date, the Developer shall provide the Town with a comprehensive inventory of all personal property and real

property incorporated into the Project and the Parties shall thereafter agree on a mutually acceptable inventory of personal property and real property incorporated into the Project as of the Completion Date (the "Inventory"). The Inventory will itemize and indicate the current value of all personal property and real property subject to taxation and adjustment pursuant to Paragraph 3 and all personal property and real property exempted from taxation and adjustment pursuant to Paragraph 3. The general categories for the Inventory are listed in Exhibit C. The Parties agree that the categories include all costs for taxable items that will be incurred by Developer in completing the Project. The Town, its officers, employees, consultants and attorneys will have the right to inspect the Project in connection with the preparation of the Inventory. Developer will update the Inventory annually on or before September 30 of each year, and an updated written Inventory will be provided to the Town on or before October 15 of each year. The Town, its officers, employees, consultants and attorneys will have the right to periodically inspect the Project on reasonable prior notice to Developer, subject to the Town agreeing to comply with all Developer safety requirements, and to review documents in the possession of Developer that relate to the inventoried property for the purpose of verifying that Developer has accurately updated the Inventory.

5. Payment Collection. The provisions of G.L. c.60 will govern the establishment of liens and the collection of any payments in lieu of taxes provided for in this Agreement as though said payments were real or personal property taxes due and payable to the Town.

6. Tax Status, Separate Tax Lot. The Town agrees that during the term of this Agreement, the Town will not assess Developer for any real estate and personal property taxes with respect to the Project or the Property to which Developer might otherwise be subject under Massachusetts law, and the Town agrees that this Agreement will exclusively govern the payments of all ad valorem real estate and personal property taxes and payments in lieu of such taxes that Developer will be obligated to make to the Town with respect to the Project and the Property, provided, however, that this Agreement is not intended to affect, and will not preclude, other assessments of general applicability by the Town for betterments, excise taxes on vehicles due pursuant to G.L. c.60A and for services provided by the Town to the Project, including but not limited to, water and sewer services. The Town agrees that no real or personal property taxes will be due from or assessed to Developer with regard to the Property or the associated real or personal property other than the payments in lieu of taxes described in this Agreement.

7. Successors and Assigns. This Agreement will be binding upon the successors and assigns of Developer, provided that said successors and assigns are a generation company engaged in the business of producing, manufacturing or generating electricity, renewable energy or related services or products for retail sale to the public, as defined in General Laws c.164, §1, and the obligations created hereunder will run with

the Property and the Project. In the event that Developer sells, transfers, leases or assigns the Property or all or substantially all of its interest in the Project, this Agreement will thereafter be binding on the purchaser, transferee or assignee. A Notice of this Agreement will be recorded in the applicable Registry of Deeds forthwith upon execution.

8. Water and Sewer Rates and Fees. The Town agrees that it will not charge Developer water and sewer rates or connection fees greater than the prevailing rates and fees applicable to other commercial users in the Town. In the event that the Town ever privatizes, leases, sells or otherwise transfers its water or sewer system or its waste water treatment plant to a private owner or operator, this provision will be binding on such successor owner or operator.

9. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement were negotiated in good faith in recognition of and with due consideration of the full and fair cash value of the Project, to the extent that such value is determinable as of the date of this Agreement in accordance with G.L. c.59, §38H. Each Party was represented by counsel in the negotiation and preparation of this Agreement and has entered into this Agreement after full and due consideration and with the advice of its counsel and its independent consultants. The Parties further acknowledge that this Agreement is fair and mutually beneficial to them because it reduces the likelihood of future disputes over real and personal property taxes, establishes tax and economic stability at a time of continuing transition and economic uncertainty in the electric utility industry in Massachusetts and the region, and fixes and maintains mutually acceptable, reasonable and accurate payments in lieu of taxes for the Project that are appropriate and serve their respective interests. The Town acknowledges that this Agreement is beneficial to it because it will result in mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes to the Town. Developer acknowledges that this Agreement is beneficial to it because it ensures that there will be mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes for the Project.

10. Additional Documentation and Actions. Each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such additional instruments, certificates and documents, and take all such actions, as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement and, upon the exercise by a Party of any power, right, privilege or remedy pursuant to this Agreement that requires any consent, approval, registration, qualification or authorization of any third party, each Party will execute and deliver all applications, certifications, instruments and other documents and papers that the exercising Party may be so required to obtain.

11. Partial Invalidity. If, for any reason, it is ever determined that this

Agreement may only apply to personal property and not to both personal property and real property, then this Agreement will be deemed to apply only to personal property, the Town will thereafter be entitled to assess and tax the real property in accordance with G.L. c. 59 and G.L. c. 60, and Developer will be entitled to challenge such assessments and taxes in accordance with Massachusetts law, with the Parties having all rights of a Town and a taxpayer with regard to such real estate taxes. Under such circumstances, this Agreement will not apply to such real estate taxes and the payments in lieu of taxes due under this Agreement will be decreased on an annual basis by the amount of real estate taxes actually paid to the Town for each year.

12. Notices. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service or otherwise. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

To: Developer

100 Constellation Way, Suite 1200C
Baltimore, MD 21202
Attn: President

With a copy to the address above, Attn: Counsel

To: Town of Uxbridge

21 South Main Street
Uxbridge, MA 01569
Attn: David Genereux, Director of Finance

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

13. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Developer and the Town each consent to the jurisdiction of the Massachusetts courts or other applicable agencies of the Commonwealth of Massachusetts regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions.

14. Good Faith. The Town and Developer shall act in good faith to carry out

and implement this Agreement.

15. Force Majeure. The Developer and Town both recognize that there is the possibility during the term of this Agreement that all or a portion of the Property or Project may be damaged or destroyed or otherwise rendered unusable due to events beyond the control of either Party. These events are referred to as "Force Majeure". As used herein, Force Majeure includes, without limitation, the following events:

- a. Acts of God including floods, winds, storms, earthquake, fire or other natural calamity;
- b. Acts of War or other civil insurrection or terrorism; or
- c. Taking by eminent domain by any governmental entity of all or a portion of the Property or the Project.

In the event an event of Force Majeure occurs during the term of this Agreement with respect to any portion of the Property or Project that renders the Property or Project unusable for the customary purpose of the production of electricity for a period of more than sixty (60) days, then Developer may, at its election, notify the Town of the existence of this condition as well as of its decision whether or not to rebuild that portion of the Property or Project so damaged or destroyed or taken.

If Developer elects not to rebuild, then it may notify the Town of its termination of this Agreement and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist.

16. Covenants of Developer. During the term of the Agreement, Developer will not voluntarily do any of the following:

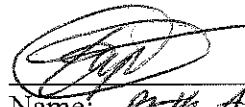
- a. seek to invalidate this Agreement except as expressly provided herein;
- b. convey by sale, lease or otherwise any interest in the premises to any entity or organization that qualifies as a charitable organization pursuant to M.G.L. c.59 Section 5 (Third); or
- c. fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement.

17. Covenants of the Town of Uxbridge. During the term of this Agreement, the Town will not do any of the following:

- a. seek to invalidate this Agreement;
- b. seek to collect from Developer any property tax upon the Property or the improvements thereon in addition to the amounts herein;
- c. impose any lien or other encumbrance upon the Property or the improvements thereon except as is expressly provided herein; or
- d. take any affirmative action in support of the bifurcation of the taxation of real and personal property.

Executed under seal by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

TOWN OF UXBRIDGE

By: 
Name: *Beth A. Pitman*
Title: *Vice Chair, Uxbridge Board of Selectmen*

**CONSTELLATION SOLAR NET
METERING, LLC**

By: _____
Name: Michael D. Smith
Title: President

EXHIBIT A

Description of Property

Property Address/Location

The Project shall be, collectively, the solar power facilities which are located on the Property, as determined by the Parties as set forth below.

The approximately 15-acre property is located at 67 Commerce Drive, Uxbridge, Massachusetts. The property includes three Uxbridge subdivision parcels, as are shown on the *Quaker Industrial Park II Definitive Subdivision Plan Sheet DS2* survey drawing dated July 28, 2006 below and described in the *Town of Uxbridge Deed Book 35525 Page 147*:

1. Parcel B, ~584,156 SF, N/F, Cnossen Long Term Investment Corp.;
2. Parcel A, ~22,966 SF, N/F, Cnossen Long Term Investment Corp.; and
3. Lot 6R, ~67,424 SF.

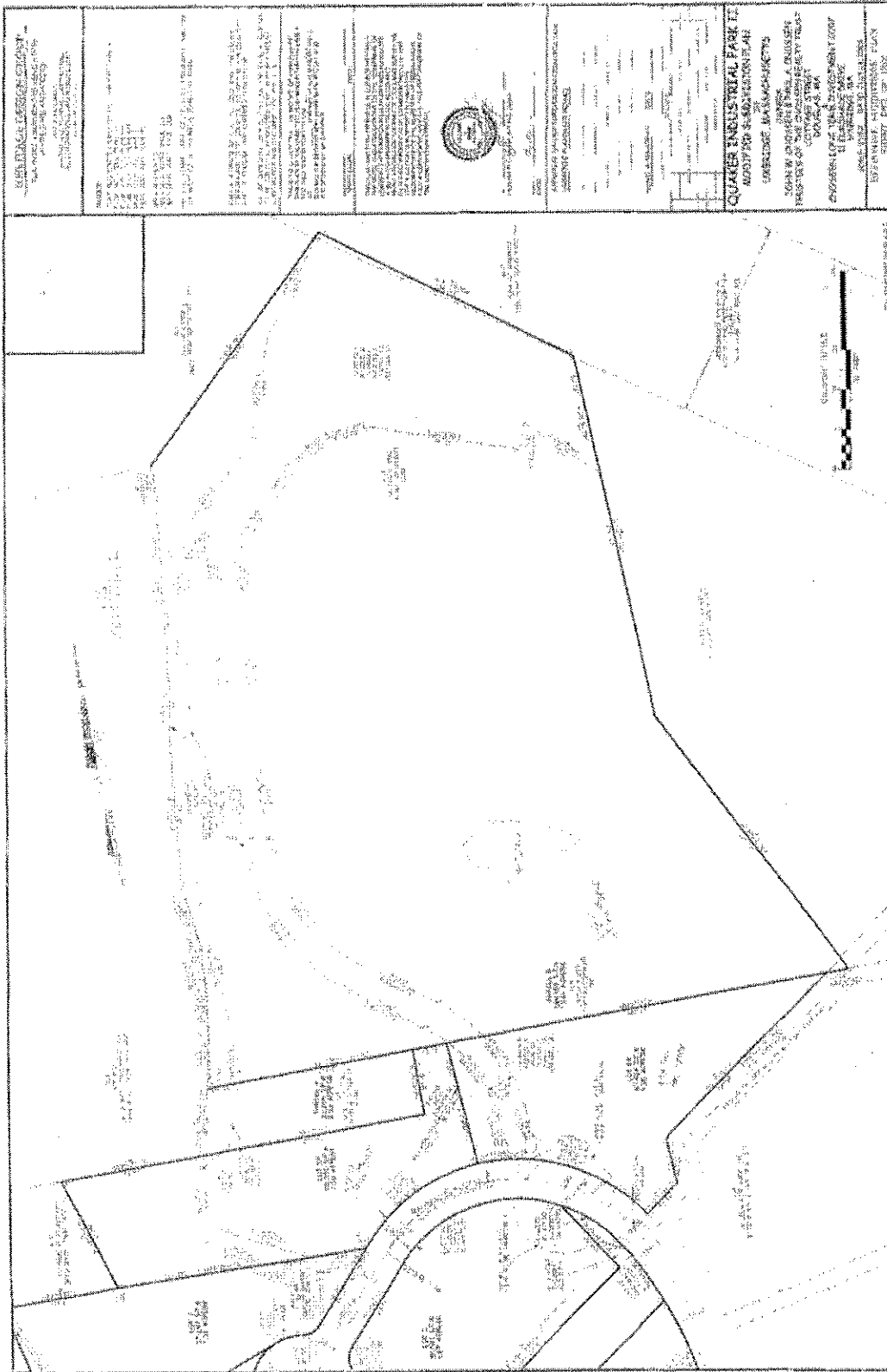
Solar panels to be located throughout the above parcels, save the existing drainage easement on the north and west sides of Parcel B and the delineated wetlands located center-east on Parcel B. Subject to the terms of the Agreement, electrical and communications system components to be located at 1) the areas of the solar panels; and 2) adjacent to the utility poles on Commerce Drive nearest to the Property. Utility grid tie-in switchyard to be located on Parcel A or Lot 6R.

Project Description

Technical Specifications

- Rated Photovoltaic Array Capacity (STC) ~2,400kW with flat-plate crystalline panels, ground-mounted at a fixed tilt (final configuration and size to be determined during engineering study)

Site Survey Drawing



Application

Crystalline solar modules to be installed utilizing a ballasted or driven pole-mounted racking system. Solar modules are connected electrically into series strings and the wiring of each string is routed through covered wire channels, if over ground, or direct-buried if underground. The array string wires are combined electrically in parallel at combiner boxes; single DC outputs from multiple combiner boxes are connected to the inverter input circuits; inverter output of approximately 200V_{AC} (low voltage) is stepped up to medium voltage (National Grid 3-phase distribution voltage) at the transformers to match the interconnecting grid voltage; medium voltage AC outputs from the transformers terminate at the interconnecting medium voltage switchgear connected to the utility's pole-mounted distribution system feeders.

Data Acquisition System

The output of the inverter is metered and monitored through the Data Acquisition System ("DAS"). The information from the inverter and the photovoltaic arrays are fed to the DAS. The DAS processes and records the data, displaying the data on computer monitors. The displayed data includes the following:

- Input & Output voltages, currents, power
- Weather information, temp, wind, solar radiation
- Current performance data
- Historical performance data

Energy Credits Purchase Price

The Town shall purchase Massachusetts Net Excess Generation (NEG) Credits generated by operation of the Project and the Developer shall assign such NEG Credits to meters and/or accounts designated by the Town. The credits supplied shall be in the form of a utility bill dollar credit and the Town shall purchase from the Developer provided NEG Credits at a 10% discount from the value of the credits. The dollar credit amount is a variable figure that is tied to the utility retail electricity rate and will, therefore, have varying value, but the credits will always be purchased at the 10% discounted rate.

Upon written notification to the Developer, the Town may elect, once during the Term of this Agreement, a one-time reduction in the 10% discounted rate of the value of the NEG Credits to a 5.5% discount rate. This reduction will be made in conjunction with an increase of the Developer's annual PILOT payment as set forth in Exhibit B to \$54,000. Such changes, once elected, shall be effective for the remainder of the Term starting with the next Fiscal Tax Year. Upon such election, the Parties shall amend the Net Excess Generation Credit Purchase Agreement accordingly.

The Developer represents and warrants that, to the best of its knowledge, in the event the Town is not able to use all energy output, NEG Credits will be available to the Town through the operation of the Project.

Term

The term of this Agreement begins on the date first set forth above, and continues for a period of twenty (20) years after the Completion Date.

Exhibit B

<u>Fiscal Tax Year</u>	<u>Annual Payment</u>
2012	\$41,000
2013	\$41,000
2014	\$41,000
2015	\$41,000
2016	\$41,000
2017	\$41,000
2018	\$41,000
2019	\$41,000
2020	\$41,000
2021	\$41,000
2022	\$41,000
2023	\$41,000
2024	\$41,000
2025	\$41,000
2026	\$41,000
2027	\$41,000
2028	\$41,000
2029	\$41,000
2030	\$41,000
2031	\$41,000

Exhibit C

CATEGORIES OF INVENTORY

A. Real and Personal Property Subject to Taxation.

B. Real and Personal Property Exempted from Taxation.