

EASEMENT ENCROACHMENT AGREEMENT

This **EASEMENT ENCROACHMENT AGREEMENT** (the “Agreement”) is dated as of the ___ day of September, 2017 by and among **MEADOW GLEN SOLAR, LLC**, a Vermont limited liability company whose address is **PO Box 927, Star Mill, 5 Park Street in Middlebury, VT 05753** (hereinafter referred to as “Encroaching Party”); **MIDDLE ROAD VENTURES, LLC**, a Vermont limited liability company whose address is **PO Box 927, Star Mill, 5 Park Street in Middlebury, VT 05753** (hereinafter referred to as “Owner”) and the **Town of Middlebury**, a Vermont municipal corporation, whose address is **77 Main Street in Middlebury, VT 05753** (hereinafter referred to as the “Town”) to permit the encroachment on a public utility easement by the Encroaching Party related to construction and use of an access road and primary electrical underground facilities, in each case from Meadow Glen Drive to the Encroaching Party’s proposed solar photovoltaic power facilities to be situated and operated according to the plans and specifications on file under approved Certificate of Public Good # 16-0041-NMP.

Recitals

WHEREAS, Encroaching Party has applied for and received a Certificate of Public Good (# 16-0041-NMP) from the Public Service Board of the State of Vermont to construct and operate a 500 kW interconnected group net-metered photovoltaic electric power system (the “Solar Power Facilities”) on a portion of property located off Meadow Glen Drive in Middlebury, Vermont Parcel#: 007003.100; SPAN: 387-120-12587 (the Owner’s entire property is referred to as the “Property”), which portion is depicted on that certain Boundary Survey “Meadow Glen Solar” prepared by VHB dated August 24, 2017 and more particularly described in **Exhibit A** attached hereto and made a part hereof (the “Leased Premises”); and

WHEREAS, in connection with the development, installation and operation of the Solar Power Facilities on the Leased Premises, Encroaching Party, as Lessee, and Owner, as Lessor, have entered into that certain Lease Agreement dated April 11, 2017 (together with all amendments and supplements thereto become a party, the “Lease”); and

WHEREAS, further in connection with the development, installation and operation of the Solar Power Facilities on the Leased Premises, Encroaching Party, as Grantee, and Owner, as Grantor, have entered into that certain Non-Exclusive Access Easement Agreement dated as of September 8th, 2017 in order to provide access for the Encroaching Party, its contractors, invitees and agents, from Meadow Glen Drive in Middlebury, Vermont to the Leased Premises (the “Access Easement”), the area of which Access Easement is depicted on that certain Boundary Survey “Meadow Glen Solar” prepared by VHB dated August 24, 2017 and more particularly described in **Exhibit B** attached hereto and made a part hereof (the “Access Easement Area”); and

WHEREAS, further in connection with the development, installation and operation of the Solar Power Facilities on the Leased Premises, Encroaching Party, as Grantee, and Owner, as Grantor, have entered into that certain Temporary Construction Easement Agreement dated as of September 8, 2017 in order to maintain a temporary construction staging area serving the Leased Premises (the “Temporary Construction Easement”), the area of which Temporary Construction Easement is depicted on that certain Boundary Survey “Meadow Glen Solar” prepared by VHB dated August 24, 2017 and more particularly described in **Exhibit C** attached hereto and made a part hereof (the “Temporary Construction Easement Area”); and

WHEREAS, there presently exists on the Property a utility easement depicted on that certain Boundary Survey “Meadow Glen Solar” prepared by VHB dated August 24, 2017 and described thereon as follows: “20’ sewer easement of Map Slide 691, Map #1049 of the Middlebury Land Records” (the “Town Sewer Easement”) the area of which Town Sewer Easement is depicted in **Exhibit D** attached hereto and made a part hereof (the “Town Sewer Easement Area”); and

WHEREAS, the Encroaching Party and Owner believe that the Access Easement Area and the Temporary Construction Easement Area encroach upon the Town Sewer Easement Area at and on various locations within the Property and desire to obtain the consent and permission of the Town to create, record and utilize the Access Easement Area and the Utility Easement Area to the extent and for the purposes set forth in the Access Easement and the Utility Easement, respectively, notwithstanding such encroachments; and

WHEREAS, the Town desires to consent and permit the Encroaching Party and the Owner create, record and utilize the Access Easement Area and the Utility Easement Area to the extent and for the purposes set forth in the Access Easement and the Utility Easement, respectively, notwithstanding such encroachments

NOW THEREFORE, in consideration of the foregoing Recitals and for other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Encroaching Party, the Owner and the Town agree as follows:

1. **Consent.** The Town has no objection to (i) the Owner and Encroaching Party’s execution, delivery and recording of the Access Easement and the Utility Easement and (ii) Encroaching Party’s benefit, use and enjoyment thereof and to the parallel occupancy of the Access Easement Area and Utilities Easement Area with the Town Sewer Easement Area at and on various locations within the Property (the “Encroachment”), subject to the following conditions:
 - a. The Encroaching Party shall:
 - i. Contact Bob Wells, Wastewater Superintendent, 48 hours prior to beginning of work on the Solar Power Facilities (802 388 6511);

- ii. Contact Patti Kirby, Public Works Assistant, 48 hours prior to beginning of work on the Solar Power Facilities (802 388 4045);
 - iii. Ensure that the gravel section of Meadow Glen Drive is maintained with an adequate driving surface until completion of the Solar Power Facilities (adequate means potholes filled and road shoulders maintained);
 - iv. Contact Public Works when completion of the Solar Power Facilities is achieved.
 - v. Provide the Town, its administrators, contractors and agents full access to the Town Sewer Easement Area at all times;
 - vi. Obtain the Town's prior consent to installation of any permanent structures within the Town Sewer Easement Area such as manholes, junction boxes, valve boxes, service meters, storm drain inlets, and utility poles;
 - vii. In order to keep the Town's rights to the Town Sewer Easement Area clear for operations, maintenance, inspection and emergency access, personal property and fixtures shall not be placed, stored or maintained on Town Sewer Easement Area. Personal property and fixtures include, but are not limited to, storage sheds, automobiles, trailers, business equipment, scrap metal, boulders, large rocks, debris, junk and piles of materials;
 - viii. Obtain the Town's prior consent to installation of any fences or temporary structures within the Town Sewer Easement Area;
2. Subsequent Repair & Excavation. Encroaching Party shall notify Public Works by phone at (802) 388-4045 at least two (2) working days prior to any subsequent excavation, maintenance, or repair of the Access Easement Area or the Utility Easement Area within the area of the Encroachments, or of installations and facilities located thereon, so that Town may provide a representative on the Property during such subsequent work.
3. Subsequent Activities of the Town. The Town expressly reserves the right to open, cut, excavate and dig across any Encroachment herein granted by this Agreement ("Town Work"), and in any such event, the Town shall not be liable for the restoration for same, or the payment of any damages to the Encroaching Party; provided, however, that the Town, its administrators, contractors and agents, shall take reasonable measures necessary to ensure that Town Work does not unreasonably impede, interrupt or prevent the generation and supply of electricity by the Solar Project Facility or damage or otherwise adversely impact the installation, operation and maintenance of the Solar Project Facility or the Encroaching Party's performance under the

Lease. Town shall use commercially reasonable efforts to notify the Owner and the Encroaching Party prior to commencement of Town Work.

- 4. No Waiver by the Town. Town, Encroaching Party and Owner agree that the existence of the Encroachments or this Agreement does not constitute a waiver of Town’s rights under the Town Sewer Easement.
- 5. No Public Dedication. Nothing contained in this Agreement will be deemed to constitute a gift or dedication of any portion of Access Easement Area or the Utility Easement Area to the public or for the public or for any public purpose whatsoever; it is the intention that this Agreement will be strictly limited to and for the purposes expressed herein.
- 6. Running with the Land. The terms and conditions of this Agreement will constitute covenants running with the land and be binding upon and inure to the benefit of the parties hereto, their successors, assigns and grantees

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

OWNER

ENCROACHING PARTY:

Middle Road Ventures, LLC

Meadow Glen Solar, LLC
By: Middle Road Ventures, LLC its sole member

By: _____
Name:
Its:

By: _____
Name:
Its:

TOWN OF MIDDLEBURY, VERMONT

By: _____
Name:
Its:

State of Vermont

COUNTY OF _____, to wit;

On this ____ day of September, 2017, before me the undersigned, a notary in and for said State, personally appeared _____, as _____ of **Middle Road Ventures, LLC**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity and as her own act and deed, and that by his or her signature on the instrument, the individual, or the person or entity upon behalf of whom or which the individual acted, executed the instrument.

Notary Public Name: _____
Commission Expires: _____

State of Vermont

COUNTY OF _____, to wit;

On this ____ day of September, 2017, before me the undersigned, a notary in and for said State, personally appeared _____, as _____ of **Meadow Glen Solar, LLC**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity and as her own act and deed, and that by his or her signature on the instrument, the individual, or the person or entity upon behalf of whom or which the individual acted, executed the instrument.

Notary Public Name: _____
Commission Expires: _____

State of Vermont

COUNTY OF _____, to wit;

On this ____ day of September, 2017, before me the undersigned, a notary in and for said State, personally appeared _____, as _____ of the **Town of Middlebury, Vermont**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity and as her own act and deed, and that by his or her signature on the instrument, the individual, or the person or entity upon behalf of whom or which the individual acted, executed the instrument.

Notary Public Name: _____
Commission Expires: _____

Exhibit A

Metes and Bounds Description of Leased Area

A CERTAIN PARCEL OF LAND SITUATED IN THE TOWN OF MIDDLEBURY, IN THE COUNTY OF ADDISON AND THE STATE OF VERMONT BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON ROD 0.2 FEET ABOVE GRADE WITH CAP INSCRIBED "TIMOTHY SHORT, LS #651" FOUND ON THE EASTERLY LINE OF LAND NOW OR FORMERLY OF GERRIT AND CHARLOTTE NOP AS DESCRIBED IN VOLUME 157, PAGE 591 RECORDED IN THE MIDDLEBURY LAND RECORDS AND THE SOUTH WESTERLY CORNER OF LOT 49 AS SHOWN ON A PLAN ENTITLED "BOUNDARY SURVEY: PROPOSED PHASE II LOT SUBDIVISION AND PHASE I LOT REVISIONS FOR MIDDLE ROAD VENTURES, LLC, MIDDLEBURY VERMONT," DATED DECEMBER 7, 2015 AND RECORDED IN MIDDLEBURY LAND RECORDS AS MAP #1450A,B,C IN SLIDE 719; THENCE

S 44°40'19" E A DISTANCE OF FORTY-SIX AND NINETY-EIGHT HUNDREDTHS FEET (46.98') ALONG A TIE COURSE TO THE NORTHWESTERLY CORNER OF THE HEREIN DESCRIBED PARCEL AND THE POINT OF BEGINNING; THENCE

S 90°00'00" E A DISTANCE OF THREE HUNDRED FIFTY AND THIRTY-SEVEN HUNDREDTHS FEET (350.37') TO A POINT; THENCE

S 55°43'17" E A DISTANCE OF ONE HUNDRED FIFTY-FIVE AND NINETY-EIGHT HUNDREDTHS FEET (155.98') TO A POINT; THENCE

S 00°00'00" E A DISTANCE OF ONE HUNDRED FORTY-ONE AND TWELVE HUNDREDTHS FEET (141.12') TO A POINT; THENCE

N 90°00'00" W A DISTANCE OF SEVENTY-NINE AND SIXTY-EIGHT HUNDREDTHS FEET (79.68') TO A POINT; THENCE

S 00°00'00" E A DISTANCE OF ONE HUNDRED SEVENTY-TWO AND FORTY HUNDREDTHS FEET (172.40') TO A POINT; THENCE

N 90°00'00" W A DISTANCE OF TWO HUNDRED FORTY-TWO AND FIFTY-NINE HUNDREDTHS FEET (242.59') TO A POINT; THENCE

N 00°00'00" E A DISTANCE OF ONE HUNDRED TEN AND FORTY HUNDREDTHS FEET (110.40') TO A POINT; THENCE

N 90°00'00" W A DISTANCE OF ONE HUNDRED TWENTY-SEVEN AND EIGHTY-SEVEN HUNDREDTHS FEET (127.87') TO A POINT; THENCE

N 09°06'28" W A DISTANCE OF ONE HUNDRED THIRTEEN AND FIFTY-ONE HUNDREDTHS FEET (113.51') TO A POINT; THENCE

N 04°04'54" W A DISTANCE OF ONE HUNDRED FIFTY-SIX AND FIFTY-FIVE HUNDREDTHS FEET (156.55') TO A POINT; THENCE

N 00°00'00" E A DISTANCE OF TWENTY-TWO AND SEVENTY-THREE HUNDREDTHS FEET (22.73') TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 152,500 SQUARE FEET OR 3.501 ACRES MORE OR LESS.

Exhibit B

Metes and Bounds Description of Access Easement Area

A CERTAIN PARCEL OF LAND SITUATED IN THE TOWN OF MIDDLEBURY, IN THE COUNTY OF ADDISON AND THE STATE OF VERMONT BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON ROD 0.2 FEET ABOVE GRADE WITH CAP INSCRIBED "TIMOTHY SHORT, LS #651" FOUND ON THE EASTERLY SIDE OF MEADOW GLEN DRIVE AND THE SOUTH WESTERLY CORNER OF LOT 45 AS SHOWN ON A PLAN ENTITLED "BOUNDARY SURVEY: PROPOSED PHASE II LOT SUBDIVISION AND PHASE I LOT REVISIONS FOR MIDDLE ROAD VENTURES, LLC, MIDDLEBURY VERMONT," DATED DECEMBER 7, 2015 AND RECORDED IN MIDDLEBURY LAND RECORDS AS MAP #1450A,B,C IN SLIDE 719; THENCE

S 03°10'47" W A DISTANCE OF THIRTY-ONE AND THIRTY-EIGHT HUNDREDTHS FEET (31.38') TO A POINT; THENCE

N 86°49'13" W A DISTANCE OF EIGHT HUNDRED EIGHTEEN AND TWENTY-FOUR HUNDREDTHS FEET (818.24') TO A POINT; THENCE

N 90°00'00" W A DISTANCE OF THREE HUNDRED FIFTY-TWO AND FORTY-THREE HUNDREDTHS FEET (352.43') TO A POINT; THENCE

N 00°00'00" E A DISTANCE OF SEVENTY-THREE AND ZERO HUNDREDTHS FEET (73.00') TO A POINT; THENCE

N 90°00'00" E A DISTANCE OF THIRTY-TWO AND FORTY HUNDREDTHS FEET (32.40') TO A POINT; THENCE

S 00°00'00" E A DISTANCE OF THIRTY-EIGHT AND SEVENTY HUNDREDTHS FEET (38.70') TO A POINT; THENCE

S 83°47'53" E A DISTANCE OF TWENTY-ONE AND EIGHTY-SIX HUNDREDTHS FEET (21.86') TO A POINT; THENCE

S 89°42'29" E A DISTANCE OF TWO HUNDRED NINETY-EIGHT AND TWENTY-SEVEN HUNDREDTHS FEET (298.27') TO A POINT; THENCE

S 86°53'03" E A DISTANCE OF THREE HUNDRED TWENTY-FOUR AND TWENTY-SEVEN HUNDREDTHS FEET (324.27') TO A POINT; THENCE

S 86°09'47" E A DISTANCE OF SIXTY-SIX AND SIXTY-SEVEN HUNDREDTHS FEET (66.67') TO A POINT; THENCE

S 87°00'34" E A DISTANCE OF THREE HUNDRED SIXTY-EIGHT AND NINETY HUNDREDTHS FEET (368.90') TO A POINT; THENCE

S 87°00'34" E A DISTANCE OF SIXTY AND TWELVE HUNDREDTHS FEET (60.12') TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINING 37,448 SQUARE FEET OR 0.860 ACRES MORE OR LESS.

Exhibit C

Metes and Bounds Description of Utilities Easement Area

N/A

Easement Area from Survey

