

**AMENDED AND RESTATED OPERATING AGREEMENT**

**OF**

**HARVARD SOLAR GARDEN I, LLC**

**Dated as of \_\_\_\_\_, 2012**

THE MEMBERSHIP INTERESTS EVIDENCED BY THIS AMENDED AND RESTATED OPERATING AGREEMENT (THE "SOLAR GARDEN LLC AGREEMENT") HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") OR PURSUANT TO MASSACHUSETTS OR ANY OTHER APPLICABLE STATE SECURITIES LAWS ("BLUE SKY LAWS"). ACCORDINGLY, THE MEMBERSHIP INTERESTS CANNOT BE RESOLD OR TRANSFERRED BY ANY PURCHASER THEREOF WITHOUT REGISTRATION OF THE SAME UNDER THE SECURITIES ACT AND THE BLUE SKY LAWS OF SUCH STATE(S) AS MAY BE APPLICABLE, EXCEPT IN A TRANSACTION WHICH IS EXEMPT FROM THE REGISTRATION REQUIREMENTS OF SUCH LAWS OR WHICH IS OTHERWISE IN COMPLIANCE THEREWITH. IN ADDITION, THE SALE OR TRANSFER OF SUCH MEMBERSHIP INTERESTS IS SUBJECT TO CERTAIN RESTRICTIONS SET FORTH IN THIS SOLAR GARDEN LLC AGREEMENT.

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# HARVARD SOLAR GARDEN I, LLC

## AMENDED AND RESTATED OPERATING AGREEMENT

This Amended and Restated Operating Agreement dated as of \_\_\_\_\_, 2012, is made and entered into by and between Worth Robbins as both the Solar Garden LLC Manager and those Persons listed on the Solar Garden LLC Register attached hereto as Solar Garden Members.

### Preliminary Statement

Harvard Solar Garden I, LLC (the “Solar Garden LLC”) was formed as a limited liability company under the laws of The Commonwealth of Massachusetts (the “State”) pursuant to the Certificate of Organization dated December 16, 2011 and filed with the Office of the Secretary of State of the State (the “Filing Office”) on December 16, 2011, which was amended pursuant to a First Amendment to Certificate of Organization filed with the Filing Office on August 17, 2012 (as it may be further amended from time to time, the “Certificate of Organization”) and an Operating Agreement dated effective as of December 16, 2011 and executed on March 26, 2012 by and between Worth Robbins as Manager and Initial Member, as amended pursuant to the First Amendment to Operating Agreement dated August 13, 2012 (the “Original Solar Garden LLC Agreement”).

In consideration of the mutual agreements set forth herein, the parties hereto agree that the Original Solar Garden LLC Agreement shall be amended and restated in its entirety and the Solar Garden LLC shall be governed by the terms and provisions of this Solar Garden LLC Agreement.

### ARTICLE I DEFINITIONS

As used in this Solar Garden LLC Agreement the following terms shall have the meanings indicated in this Article I. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, as the context requires:

Act. The Massachusetts Limited Liability Act, as amended from time to time.

Adjusted Capital Account Deficit. With respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Solar Garden LLC Agreement or is

deemed to be obligated to restore pursuant to the next to the last sentence of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(1)(5) after taking into account any changes during such year in Partnership Minimum Gain and Partner Minimum Gain; and

(b) Debit to such Capital Account the items described in Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations.

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Section 1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

Affiliate. As to any named Person: (i) such Person, his or her spouse, parents, parents in law, descendants, nephews, nieces, brothers, sisters, brothers in law, sisters in law, children in law, and grandchildren in law; (ii) the legal representative, successor or assignee of, or any trustee of a trust for the benefit of, any such Person or his or her spouse, parents, parents in law, descendants, nephews, nieces, brothers, sisters, brothers in law, sisters in law, children in law, and grandchildren in law; (iii) any entity of which a majority of the voting interests is owned by any Person; (iv) any officer, director, trustee, employee, or partner of any Person; and (v) any Person otherwise directly or indirectly controlling, controlled by or under direct or indirect common control with, any Person referred to in any of the preceding clauses.

Agreed Value. The fair market value of property as determined by the Solar Garden LLC Manager using such reasonable methods of valuation as it deems appropriate.

Angel Financing. The bridge financing provided by the Solar Garden LLC Manager in an amount up to \$300,000 which will reduce the amount of the Transaction Loan as well as eliminate the need for a loan guarantee for the Transaction Loan. The Solar Garden LLC Manager will receive payments from time to time to repay this bridge financing. Interest on the bridge financing will be paid at the same schedule as the interest paid by the Solar Garden LLC Manager pursuant to a home equity line of credit which will be fixed for 3 years at 2.99%, floating thereafter at Wall Street Journal Prime plus 1.25%, with a floor of 4.5%.

Angel Financing Documents. The promissory note, loan agreement, and other documents to be entered into in connection with the Angel Financing.

Applicable Laws. Any provision of any federal, state, municipal or local laws, ordinances, rules, regulations, or requirements, including, without limitation, any order, judgment, decree, determination, or award of any court binding on the Solar Garden LLC, the Solar Garden LLC Manager, or any Member or any entity affiliated with the foregoing, or their respective assets, including the Project.

Bankruptcy. The occurrence of any of the following events as to a Member (i) the entry of a decree or order for relief by a court having jurisdiction in respect of such Person in a case under the federal bankruptcy laws, as now or hereafter constituted, or any other applicable federal or state bankruptcy, insolvency or other similar law, or the appointment of a receiver, liquidator, assignee, trustee, custodian, sequestrator (or similar official) of such Person or for any substantial part of its property, or the issuance of an order for the winding-up or liquidation of its affairs and, unless the decree or order for relief was entered on the application of such Person,

the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive Days, or (ii) the commencement by such Person of a proceeding seeking any decree, order or appointment referred to in clause (i), the consent by such Person to any such decree, order or appointment, or the taking of any action by such Person in furtherance of any of the foregoing.

Bankruptcy Code. Any and all of the sections and chapters of Title 11 of the United States Code, as in effect from time to time.

Base Purchase Price. As defined in Section 3.02(a).

Block 8 Program. As defined within the definition of Commonwealth Solar Rebate.

Block 9 Program. As defined within the definition of Commonwealth Solar Rebate.

Book Depreciation. The depreciation, cost recovery or amortization of assets allowable to the Solar Garden LLC with respect to an asset for any period, except that if (a) with respect to any asset the Book Value of which differs from its adjusted tax basis for federal income tax purposes at the beginning of such period and which difference is being eliminated by use of the “remedial method” as defined by Section 1.704-3(d) of the Treasury Regulations, Book Depreciation for such period shall be the amount of book basis recovered for such period under the rules prescribed by Section 1.704-3(d)(2) of the Treasury Regulations, and (b) with respect to any other asset the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such period, Book Depreciation shall be an amount which bears the same ratio to such beginning Book Value as federal income tax depreciation, amortization, or other cost recovery deduction for such period bears to such beginning adjusted basis; *provided, however,* that in the case of clause (b) above, if the adjusted basis for federal income tax purposes of an asset at the beginning of such period is zero, Book Depreciation shall be determined with reference to such beginning Book Value using any reasonable depreciation method selected by the Solar Garden LLC Manager.

Book Gain or Book Loss. The gain or loss that would be recognized by the Solar Garden LLC for federal income tax purposes as a result of sales or exchanges of its assets if its tax basis in such assets were equal to the Book Value of such assets.

Book Value. With respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows and as adjusted in accordance with this Solar Garden LLC Agreement:

(a) The initial Book Value of any asset contributed by a Member to the Solar Garden LLC shall be the Agreed Value of such asset at the time of contribution;

(b) The Book Values of all Solar Garden LLC assets shall be adjusted to equal their respective Agreed Values upon the liquidation of the Solar Garden LLC within the meaning of Treasury Regulations Section 1.704-1(b), or as appropriate or necessary in the determination of the Solar Garden LLC Manager to ensure that the Capital Accounts of the Members properly reflect their respective economic interests;

(c) Except as otherwise provided in subparagraph (b), the Book Value of any item of Solar Garden LLC assets distributed to any Member shall be adjusted to equal the Agreed Value (taking Code Section 7701(g) into account) of such asset on the date of distribution;

(d) the Book Value of any item of Solar Garden LLC assets shall be adjusted to equal to the Agreed Value on the date of the grant of an interest in the Solar Garden LLC (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Solar Garden LLC by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity or in anticipation of becoming a Member; and

(e) The Book Values of Solar Garden LLC assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Section 1.704-1(b)(2)(iv)(m) of the Treasury Regulations and subparagraph (f) of the definition of “Net Income” and “Net Losses”; *provided, however*, that the Book Values shall not be adjusted pursuant to this subparagraph (e) to the extent that an adjustment pursuant to subparagraph (b) is required in connection with a transaction that would otherwise result in an adjustment pursuant to this subparagraph (e).

If the Book Value of an asset has been determined or adjusted pursuant to subparagraph (a), (b) or (e), such Book Value shall thereafter be adjusted by the book depreciation (pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3)) taken into account with respect to such asset, for purposes of computing Net Income and Net Loss.

Business Day. Any Day other than a Saturday or Sunday or a legal holiday in the State.

Capital Account. The individual capital account established for each Member in accordance with the provisions of this Solar Garden LLC Agreement and maintained as provided in Section 3.06.

Capital Contributions. For any Member at the particular time in question, the aggregate of the dollar amounts of any cash contributed to, or agreed to be contributed to, the Solar Garden LLC’s capital and the Agreed Value of any property or asset contributed to, or agreed to be contributed to, the Solar Garden LLC’s capital (reduced by any liabilities either assumed by the Solar Garden LLC upon such contribution or to which such property is subject when contributed).

Capital Transaction. Any refinancing, sale or other disposition by the Solar Garden LLC of all or any part of the Project LLC Interest, and any refinancing, sale or other disposition by the Project LLC of all or substantially all of its assets.

Cash Flow. All cash receipts of the Solar Garden LLC from the Project LLC or other miscellaneous sources, including any amounts withdrawn from Reserves as no longer necessary for Solar Garden LLC purposes, but shall not include any Capital Contributions or Solar Garden LLC borrowings.

Cash Grant. Any payment paid by the United States Department of Treasury under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009.

Cash Grant Guidance. Any and all guidance relating to the Cash Grants, including but not limited to Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, Treasury Department Guidance regarding Payment for Specified Energy Property in Lieu of Tax Credits, dated July, 2009 and revised March 2010 and the Frequently Asked Questions and Answers “Beginning of Construction” issued by the Department of Treasury in connection therewith, the Grant Application, and the Terms and Conditions (such Terms and Conditions being those which will be required to be agreed to in connection with an application for and acceptance of Cash Grants).

Certificate of Organization. As defined in the “Preliminary Statement” above.

Closing Date. The date this Agreement is entered into by the parties hereto.

Code. The Internal Revenue Code of 1986, as amended from time to time, and the corresponding provisions of any future federal tax law and, to the extent applicable, the Treasury Regulations.

Commonwealth Solar Rebate. The financial assistance provided by the Massachusetts Clean Energy Technology Center for the design and construction of solar photovoltaic projects in the form of rebates under either (i) the Commonwealth Solar II Photovoltaic Rebate Program—Program Manual Solicitation No. 2011 CS II-Version 8.0 effective October 14, 2011 (the “Block 8 Program”) or (ii) the Commonwealth Solar II Photovoltaic Rebate Program—Program Manual Solicitation No. 2012 CS II-Version 9.0 effective January 20, 2012 (the “Block 9 Program”) or (iii) to the extent applicable, any future Commonwealth Solar II Photovoltaic Rebate Program—Program Manual Solicitation.

Commonwealth Solar Rebate Application. The application filed by the Project LLC, with the consent of each prospective host customer, in order to reserve the Commonwealth Solar Rebate.

Consent of the Solar Garden Members. The consent or approval of the Solar Garden Members owning at least the percentage of the outstanding Units required to take or consent to various actions hereunder, without taking into account any Units held by the Defaulting Investors. If the percentage of Units required for approval is not specified in this Solar Garden LLC Agreement, or the amount specified is a “majority”, the Consent of the Solar Garden Members owning more than 50% of the outstanding Units shall be required, without taking into account any Units held by Defaulting Investors. Such consent or approval shall be deemed to have been received from a particular Solar Garden Member if (i) written consent or approval is provided to the Solar Garden LLC in accordance with Section 9.06 of this Solar Garden LLC Agreement or (ii) such consent or approval is given at a meeting held in accordance with Section 9.02 of this Solar Garden LLC Agreement.

Cost Overruns. Costs to complete construction and development of the Project which exceed the sources available to the Project LLC for payment thereof; provided, however, the Cost Overruns cannot exceed \$124,434. If the Cost Overruns would otherwise exceed that

amount, then the size of the Project shall be reduced so as to not exceed such amount, provided that in all events the 2011 Components must be included as part of the Project.

Counsel for the Solar Garden LLC. The attorneys or law firm or firms selected by the Solar Garden LLC Manager.

Day. A calendar day; provided, however, that if any period of Days referred to in this Solar Garden LLC Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

Default Purchase Option. As defined in Section 3.05.

Defaulting Investor. As defined in Section 3.05.

Disqualified Person. A Person who is (i) a Federal, state or local government, including any political subdivision, agency or instrumentality thereof, (ii) an organization that is described in Section 501(c) of the Code and is exempt from tax under Section 501(a) of the Code, (iii) an entity referred to in Section 54(j)(4) of the Code; provided, that if any indirect owner of the Solar Garden LLC that is a Person described in clauses (ii) – (iii) owns its indirect interest through a taxable C Corporation (as defined in the Code), then such Person will not be deemed to be a Disqualified Person,

Distributable Cash Flow. For each Fiscal Quarter the sum of (i) Operating Revenues and (ii) any other funds deemed available for distribution by the Solar Garden LLC Manager, less the sum of all Operating Expenses, debt service and all other cash expenditures, determined from time to time by the Solar Garden LLC Manager (whether or not such expenditures are deducted, amortized or capitalized for tax purposes). Distributable Cash Flow shall be determined separately for each Fiscal Quarter.

Distribution. Any transfer of money or other property to a Member, in such Person's capacity as a Member, from the Solar Garden LLC. For purposes of this definition of Distribution, property is to be valued at its Agreed Value.

EPC Contract. The Amended and Restated Contract between the EPC Contractor and the Project LLC dated effective as of November 20, 2012 (which amends and restates the initial contract dated December 20, 2011) with respect to construction and development of the Project, a copy of which is attached to the Memorandum as Exhibit K.

EPC Contractor. Solar Design Associates, LLC.

Escrow Account. The account opened with the Escrow Agent by the Solar Garden LLC to hold the funds used to pay the Capital Contributions of the Investors prior to admission of such Investors to the Solar Garden LLC as Solar Garden Members.

Escrow Agent. Enterprise Bank of Lowell, Massachusetts.

Filing Office. As set forth in the "Preliminary Statement" to this Solar Garden LLC Agreement.

Financial Projections. The financial projections attached as Exhibit C to the Memorandum.

Fiscal Quarter: The four quarters within each Fiscal Year.

Fiscal Year. From January 1 to December 31 of each year or such portion thereof as the Solar Garden LLC shall be in existence.

FPA. As defined in Section 5.09(u).

Governmental Authority. Any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority.

Grant Application. The on-line application available at [www.treasury.gov/recovery](http://www.treasury.gov/recovery) to receive Cash Grants.

Harvard Solar Garden Program. As defined in the Memorandum.

Host. RDJ Realty Trust.

Host Agreement. The Solar Energy Facility Ground Lease between the Project LLC and the Host dated August 27, 2012 and executed on September 12, 2012, including the Lease Amendment dated December 7, 2012, copies of which are attached as Exhibit D to the Memorandum.

Host Lease Payments. Any rent in the form of net metered electricity or other sums payable by the Project LLC to the Host under the Host Agreement.

Initial Member. Worth Robbins, in his capacity as the initial Member of the Solar Garden LLC pursuant to the Original Solar Garden LLC Agreement.

Installment Method. The Payment Option under which a Solar Garden Member pays its Capital Contribution in installments as more fully described in Section 3.02

Interest. The entire interest of a Member in the Solar Garden LLC at any particular time, including the right of such Member to any and all benefits to which it is entitled to under this Solar Garden LLC Agreement and the obligations of such Member under this Solar Garden LLC Agreement.

Investor Subscription Agreement. The subscription agreement included within the Investor Subscription Documents.

Investor Subscription Documents. The documents in a form reasonably acceptable to the Solar Garden LLC Manager which evidence the subscriptions for Units of each Investor and which will include, without limitation, the Investor Subscription Agreement and the Promissory Obligation.

IRS. The United States Internal Revenue Service or any successor Governmental Authority.

Liquidator. The Solar Garden LLC Manager or, if there is none at the time in question, such other Person who may be appointed in accordance with applicable law and who shall be responsible for taking all action necessary or appropriate to wind up the affairs of, and distribute the assets of, the Solar Garden LLC upon its dissolution.

Local Utility. National Grid.

Lump Sum Cash Method. The Payment Option under which a Solar Garden Member pays its entire Capital Contribution (other any additional Capital Contribution which may be due under Section 3.02(e)) on or before the Closing Date as more fully described in Section 3.02.

Material Adverse Effect. A fact, event or circumstance that, alone or when taken with other events or conditions occurring or existing concurrently with such event or condition, (a) has or is reasonably expected to have a material adverse effect on the business, operations, condition (financial or otherwise), assets, liabilities, prospects, or properties of a Person; (b) has or is reasonably expected to have any material adverse effect on the validity or enforceability of the Transaction Documents; (c) materially impairs or is reasonably expected to materially impair the ability of a Person to meet or perform its obligations under the Transaction Documents; or (d) has or is reasonably expected to have any material adverse effect on a Person's rights under the Transaction Documents.

Member. Any Person executing this Solar Garden LLC Agreement as a Solar Garden Member or hereafter admitted to the Solar Garden LLC as a Solar Garden Member as provided in this Solar Garden LLC Agreement, including Substituted Solar Garden Members, but such term excludes any Person who has ceased to be a Member.

Memorandum. The Private Placement Memorandum of the Solar Garden LLC dated December \_\_, 2012, as supplemented from time to time.

Net Income and Net Losses. For any given Fiscal Year or other period, an amount equal to the Solar Garden LLC's taxable income or loss for such Fiscal Year, determined in accordance with Code Section 703(a), including, for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1), with the following adjustments:

(f) Any income of the Solar Garden LLC that is exempt from federal income tax and not otherwise taken into account in computing Net Income or Net Losses shall be added to such taxable income or loss;

(g) Any expenditures of the Solar Garden LLC described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Net Income or Net Losses, shall be subtracted from such taxable income or loss;

(h) In the event the Book Value of any Solar Garden LLC asset is adjusted pursuant to the definition of Book Value, the amount of such adjustment shall be taken into account as gain or loss from the disposition of such asset for purposes of computing Net Income or Net Losses;

(i) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(j) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account book depreciation for such Fiscal Year or other period, computed in accordance with the capital account maintenance rules of Treasury Regulations Section 1.704-1(b)(2)(iv)(g)(3); and

(k) To the extent an adjustment to the adjusted tax basis of any Solar Garden LLC asset pursuant to Code Section 734(b) or Code Section 743(b) is required pursuant to Treasury Regulations Section 1.704-(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of the Solar Garden LLC, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Income or Net Losses.

Net Metering Credit Agreement. The Schedule Z to be submitted by the Project LLC to the Local Utility.

Net Purchase Price. As defined in Section 3.02(a).

Nonrecourse Deductions. Has the meaning set forth in Treasury Regulations Section 1.704-2(c).

Offering. The offering of Units as described in the Memorandum.

Offering Termination Date. The date on which the Offering is terminated by the Solar Garden LLC Manager, which will be no later than December 15, 2012, unless extended by the Solar Garden LLC Manager in its sole discretion to a date no later than December 31, 2012.

O&M Agreement. The Operations and Maintenance Agreement entered into by and between the Project LLC and the O&M Provider, a copy of which is attached to the Memorandum as Exhibit L.

O&M Provider. The EPC Contractor.

Organizational and Offering Expenses. All expenses incurred in connection with the formation of the Solar Garden LLC, the exemption of the Units from registration under federal

and state securities laws and other expenses incurred in connection with the organization of the Solar Garden LLC and the offering of the Units.

Original Solar Garden LLC Agreement. As defined in the Preliminary Statement.

Operating Deficit. The amount by which Operating Revenues for any particular period of time is exceeded by Operating Expenses and debt service. For purposes of this definition, all expenses shall be deemed payable on a sixty (60) Day current basis if no due date is otherwise stated.

Operating Expenses. All expenses of operation of the Project LLC and the Solar Garden LLC, as incurred by the Solar Garden LLC in the reasonable discretion of the Solar Garden LLC Manager, including without limitation, Host Lease Payments, debt service payments, the costs of utilities, maintenance, repairs and necessary replacements, audit fees, tax preparation, accounting fees and expenses, legal fees, taxes determined to be actually due and payable with respect to the Project, insurance premiums, professional and management fees, miscellaneous expenses, and any deposit to cash reserves for working capital, capital expenditures, repairs, replacements and anticipated expenditures, in such amounts as may be required or may be determined from time to time by the Solar Garden LLC Manager to be advisable for the operation of the Solar Garden LLC, but excluding (i) any payments or distributions of Distributable Cash Flow; and (ii) depreciation, amortization deductions and other non-cash items. For purposes of this definition, all expenses shall be deemed paid on the earlier of the stated due date or on a sixty (60) Day current basis.

Operating Revenues. All cash received from operation of the Project LLC and the Solar Garden LLC in the ordinary course of business, including revenue associated with energy production, payments under the Net Metering Credit Agreement withdrawals from Reserves to the extent otherwise permitted hereunder, and all other sources; provided, however, that Operating Revenues shall exclude the proceeds of any loans to the Solar Garden LLC, and interest earned on Reserves (unless withdrawn as aforesaid).

Partner Minimum Gain. An amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if such Partner Nonrecourse Debt were treated as Nonrecourse Debt, determined in accordance with Section 1.704-2(c)(i) of the Treasury Regulations.

Partner Nonrecourse Debt. The meaning set forth in Section 1.704-2(b)(4) of the Treasury Regulations.

Partner Nonrecourse Debt Minimum Gain. An amount, with respect to each Partner Nonrecourse Debt, equal to the Partnership Minimum Gain that would result if the Partner Nonrecourse Debt were treated as a Nonrecourse Debt, determined in accordance with Regulations Section 1.704-2(i)(3).

Partner Nonrecourse Deductions. The meaning set forth in Section 1.704-2(i)(2) of the Treasury Regulations.

Partnership Minimum Gain. The meaning set forth in Sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.

Payment Option. The Lump Sum Cash Method or the Installment Method, as applicable.

Person. An individual, a corporation, a partnership, a limited liability company or partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof.

Placed In Service. All of the following events have occurred with respect to the Project: (i) the Project has been installed and tested and shown capable of operating in a reliable and continuous manner for its intended purpose and (ii) all licenses and permits needed to operate the Project and to put the Project to its intended use to generate electricity have been obtained, and (iii) all other events have occurred so that the Project is considered “Placed in Service” consistent with the IRS’s published guidance interpreting the terms “placement in service” and “placed in service” for purposes of Section 48 of the Code or, if different, Cash Grant Guidance.

Plans and Specifications. As defined in Section 4.01(j).

Pre-Development Lenders. Those Persons identified in the Pre-Development Loan Note who participated as a lender in the Pre-Development Loan.

Pre-Development Loan. The loan in the aggregate amount of \$492,529 from the Pre-Development Lenders to the Solar Garden LLC, the proceeds of which were utilized by the Solar Garden LLC to make its initial capital contribution to the Project LLC.

Pre-Development Loan Documents. The Pre-Development Loan Note and any other documents evidencing the Pre-Development Loan.

Pre-Development Loan Note. The Pre-Development Loan Note attached as Exhibit I to the Memorandum.

Project. The photovoltaic solar array being developed in the Town of Harvard by the Project LLC on land owned by the Host pursuant to the Harvard Solar Garden Program as more fully described in the Memorandum.

Project Documents. Collectively, each of the EPC Contract, the Safe Harbor Purchase Contract, the O&M Agreement, the Host Agreement, the Net Metering Agreement, the Commonwealth Solar Rebate Application, the Plans and Specifications, the Warranties, the Angel Financing Documents, and the Transaction Loan Documents.

Project LLC. Harvard Solar Garden Project I, LLC, a Massachusetts limited liability company, which is the owner of the Project.

Project LLC Agreement. The Amended and Restated Operating Agreement of the Project LLC dated August 13, 2012, as amended from time to time.

Project LLC Interest. The entire interest of the Solar Garden LLC in the Project LLC, including all rights and benefits as provided in the Project LLC Agreement and all obligations of the Solar Garden LLC under the Project LLC Agreement.

Project LLC Manager. Any Person or Persons, who at the time of reference thereto have been designated as Project LLC Manager of the Project LLC in accordance with the terms of the Project LLC Agreement. As of the date hereof, Worth Robbins is the sole Project LLC Manager.

Property Disposition. As defined in Section 7.01(g).

Pro Rata Share. The Pro Rata Share of each Solar Garden Member shall equal a fraction, the numerator of which shall be the number of Units held by that Solar Garden Member and the denominator of which shall be the number of Units held by all Solar Garden Members.

Promissory Obligation. The subscription agreement, promissory note or other form of written obligation by which a Solar Garden Member electing the Installment Method agrees to make its Capital Contributions to the Solar Garden LLC on an installment basis.

Prudent Utility Practices. With respect to the Project those practices, methods, equipment, specifications and standards of safety and performance, of which there may be more than one, and as the same may change from time to time, as are commonly used by solar energy systems of a type and size similar to the Project and in the same geographic region as the Project that, at a particular time, in the exercise of reasonable judgment in light of the facts known at the time a decision was made, would be expected to accomplish the desired result in a manner consistent with law, regulations, codes, standards, equipment manufacturer's recommendations, reliability, safety, environmental protection, economy and expedition.

Recapture Event. A recapture event shall have occurred if the Project LLC claims the Cash Grant and allocates the non-taxable income attributable thereto as proceeds to the Solar Garden LLC and there is any recapture, loss or disallowance of such Cash Grant (other than a recapture arising as a result of a sale or disposition of the interest of a Solar Garden Member, as a result of a Disqualified Person having a direct or indirect ownership interest in a Solar Garden Member, as a result of any action or failure to act by such Solar Garden Member, or as a result of any change in Applicable Laws after the date of this Solar Garden LLC Agreement).

Regulatory Allocations. As defined in Section 4.03.

Related Person. Has the meaning set forth in Treasury Regulations Section 1.752-4(b).

Reserves. Funds set aside by the Solar Garden LLC Manager for the contingencies related to the operation, management and administration of the Solar Garden LLC.

Safe Harbor Purchase Contract. The contract dated December 28, 2011 between the EPC Contractor and the Project LLC relating to the purchase of the 2011 Components in order to satisfy the "Safe Harbor" provisions for the Cash Grant and documentation submitted to Treasury on September 28, 2012, copies of which are attached as Exhibit M to the Memorandum.

Security Agreement. The Investor Subscription Agreement or other agreement in form and substance satisfactory to the Solar Garden LLC Manager executed by a Solar Garden Member that grants a security interest to the Solar Garden LLC in such Solar Garden Member's Interest to secure such Solar Garden Member's obligation to pay its Capital Contribution to the Solar Garden LLC.

Solar Garden LLC. As defined in the Preliminary Statement.

Solar Garden LLC Agreement. This Amended and Restated Operating Agreement, as amended from time to time.

Solar Garden LLC Manager. Any Person or Persons, who at the time of reference thereto have been designated as Solar Garden LLC Manager of the Solar Garden LLC in accordance with the terms of this Solar Garden LLC Agreement and listed as such on the Solar Garden LLC Register. As of the date hereof, Worth Robbins is the sole Solar Garden LLC Manager.

Solar Garden LLC Manager's Knowledge. The actual knowledge of one or more of the following individuals as of the time of determination: the Solar Garden LLC Manager itself if an individual and the Chief Executive Officer, President, Chief Financial Officer or Chief Operating Officer or any equivalent thereof of the Solar Garden LLC Manager if it is an entity; provided that, for any matters relating to the Host, with the exception of the actual knowledge stated above, "Solar Garden LLC Manager's Knowledge" shall be limited to the representations and warranties being made by the Host under the Project Documents without Solar Garden LLC Manager undertaking further inquiry or due diligence.

Solar Garden LLC Register. The schedule (which shall form a part of the books and records of the Solar Garden LLC) listing the names and addresses of the Solar Garden LLC Manager and each Solar Garden Member, together with the respective amounts of the respective Capital Contributions and the number of Units held by each Solar Garden Member, which schedule shall be maintained in accordance with this Solar Garden LLC Agreement by the Solar Garden LLC Manager. A copy of the form in which such Fund Register will initially appear is attached to the end of this Solar Garden LLC Agreement.

Solar Garden Member. A Person admitted to the Solar Garden LLC in such capacity pursuant to the terms of this Solar Garden LLC Agreement.

Solar Garden Member Interest. The Interest of a Solar Garden Member in the Solar Garden LLC.

Solar Garden Member Waiting List. The list maintained by the Solar Garden LLC Manager of Persons who have expressed an interest in becoming a Member of the Solar Garden LLC to the extent an Interest becomes available.

State. As defined in the Preliminary Statement.

Substituted Solar Garden Member. Any Solar Garden Member who is admitted to the Solar Garden LLC as a successor Solar Garden Member pursuant to Section 7.02.

Tax Matters Partner. As defined in Section 4.07.

Temporary Investments. United States government securities, securities issued or fully guaranteed by United States government agencies, certificates of deposit and time or demand deposits in, money market accounts with, or repurchase agreements or other short term investments constituting obligations of, commercial banks with deposits insured by the Federal Deposit Insurance Corporation.

Town of Harvard. The Town of Harvard, Massachusetts.

Transaction Documents. Collectively, the Project Documents, this Solar Garden LLC Agreement, the Project LLC Agreement, the Pre-Development Loan Documents, the Investor Subscription Documents.

Transaction Lender. Enterprise Bank of Acton, Massachusetts.

Transaction Loan. The construction and permanent loan in the principal amount of up to \$350,000 which is anticipated to be made to the Project LLC and the Solar Garden LLC by the Transaction Lender in accordance with the terms and provisions of the term sheet and commitment letter, both attached to the Memorandum as Exhibit J.

Transaction Loan Documents. The promissory note, loan agreement, security agreement and other documents to be entered into in connection with the Transaction Loan.

Transfer. As to a Member, the assignment, sale, transfer, exchange, or other disposition of all or any part of such Member's Interest.

Treasury Regulations. The regulations, including temporary regulations promulgated under the Code, as such regulations may be amended from time to time (including the corresponding provisions of any future regulations).

2011 Components. The photovoltaic modules and inverters acquired by the Project LLC for a purchase price of \$88,830 pursuant to the terms and provisions of the Safe Harbor Purchase Contract.

Unit. The Solar Garden Member Interest of a Solar Garden Member attributable to a Capital Contribution as determined in accordance with Section 3.02.

Warranty or Warranties. Any warranty made by or passed through to the Project LLC by the EPC Contractor.

## **ARTICLE II ORGANIZATION**

Section 2.01 Continuation. Pursuant to the provisions of the Act, the parties hereto hereby continue the Solar Garden LLC on the terms and conditions set forth herein.

Section 2.02 Name. The name of the Solar Garden LLC is Harvard Solar Garden I, LLC.

Section 2.03 Purposes. The business purpose of the Solar Garden LLC shall be to invest as the sole member of and acquire the Project LLC Interest in the Project LLC, which Project LLC will in turn develop, finance, own, maintain and sell or otherwise dispose of the Project in accordance with the Harvard Solar Garden Program and Applicable Laws. The business of the Solar Garden LLC shall include participation in such activities as are related or incidental to the above.

Section 2.04 Principal Office and Agent for Service of Process. The principal office of the Solar Garden LLC shall be located at 115 Massachusetts Avenue, PO Box 469, Harvard, MA 01451 or at such other place as may be designated by written notice from the Solar Garden LLC Manager to the Solar Garden Members. The Solar Garden LLC may have such additional place or places of business as the Solar Garden LLC Manager may from time to time deem advisable. The name of the Solar Garden LLC's agent for service of process in the State is Worth Robbins, 115 Massachusetts Avenue, Harvard, MA 01451.

Section 2.05 Term. The Solar Garden LLC shall commence upon the filing of the Certificate of Organization with the Filing Office and the term shall be perpetual until dissolved by a decision of the Members or otherwise as prescribed in accordance with the terms of this Solar Garden LLC Agreement or the laws of the State.

### **ARTICLE III SOLAR GARDEN LLC MANAGER; MEMBERS AND CAPITAL**

Section 3.01 Solar Garden LLC Manager. The name and address of the Solar Garden LLC Manager is set forth on the Solar Garden LLC Register, a copy of the current version of which is attached to this Solar Garden LLC Agreement. The Solar Garden LLC Manager is authorized to acquire, but not obligated to acquire, interests in the Solar Garden LLC as a Solar Garden Member by purchasing Units on the same terms available to others as Solar Garden Members. If the Solar Garden LLC Manager purchases any Units, it will be treated as a Solar Garden Member with regard to those Units.

Section 3.02 Units; Solar Garden Members.

(a) The Solar Garden LLC is comprised of 284 Units which shall have an initial base purchase price of \$5,500 per Unit (the "Base Purchase Price"). Units may be purchased under the Lump Sum Cash Method or the Installment Method (each a "Payment Option"), as more fully described below. Each Solar Garden Member must purchase at least one (1) Unit. The actual purchase price (the "Net Purchase Price") payable by each Solar Garden Member shall vary based on the number of Units purchased and the timing of the filing of the Commonwealth Solar Rebate Application for such Solar Garden Member and the related reservation of such Commonwealth Solar Rebate, as more fully described below. The Solar Garden LLC Manager is authorized to admit Persons as Members of the Solar Garden LLC in the capacity of Solar Garden Members on or before the Offering Termination Date so long as acceptable subscriptions for all, but not fewer than all, 284 Units have been received by the Solar

Garden LLC Manager. A Person may be admitted as a Solar Garden Member if it has executed Subscription Documents acceptable to the Solar Garden LLC Manager and shall become bound by this Solar Garden LLC Agreement if such Person (or a representative authorized by such Person in writing) pays its requisite Capital Contribution due by the Closing Date and executes this Solar Garden LLC Agreement or any other writing evidencing the intent of such Person to become a Solar Garden Member and the Solar Garden LLC Manager accepts such agreement on behalf of the Solar Garden LLC, which acceptance can be in the form of recording the admission of such Person as a Solar Garden Member on the Solar Garden LLC Register.

(b) Prior to Closing, the Solar Garden LLC Manager shall determine and advise each Investor of the Net Purchase Price such Investor will be required to pay to the Solar Garden LLC in accordance with Section 3.02(d) below. Investors who elect the Lump Sum Cash Method must pay their entire Capital Contribution based on the applicable Net Purchase Price in full on or prior to the Closing Date, or may elect to pay 65% of their Capital Contribution on or prior to the Closing Date, and pay the remaining 35% before the start of construction, anticipated to be on or after January 1, 2013. Any Investor who elects the Lump Sum Cash Method but who fails to pay the remaining 35% shall be deemed a Defaulting Investor and be subject to the actions set forth in Section 3.05 of the Solar Garden LLC Agreement. Investors who elect the Installment Method must pay at least 10% of their Capital Contribution based on the applicable Net Purchase Price on or prior to the Closing Date and pay the balance with interest on the principal amount outstanding from time to time at 6% per annum, or such other rate as may be determined from time to time by the bank providing funds to the Solar Garden LLC, in cash or through credited payment until paid-in full as follows:

(i) Monthly, within ten (10) Business Days of receipt of a payment invoice from the Local Utility, an amount which will be equal to the net metering credit reflected on such invoice for the prior month;

(ii) The Pro Rata Share of any Distributable Cash Flow which would otherwise be distributed to such Solar Garden Member shall be retained by the Solar Garden LLC and applied to pay down the Capital Contribution balance of such Solar Garden Member;

(iii) To the extent cumulative payments and/or credits under Section 3.02(b)(i) and (ii) in any Fiscal Year do not total at least the schedule of payments for an 84-month fixed amortization of the amount financed, such Solar Garden Member shall be obligated to pay the shortfall difference to the Solar Garden LLC on or before June 30<sup>th</sup> of the following Fiscal Year; and

(iv) Any outstanding principal amount and accrued interest thereon shall be paid-in full on or before December 31, 2021.

(c) The initial Capital Contribution for each Person to be admitted to the Solar Garden LLC as a Solar Garden Member shall be held in the Escrow Account with the Escrow Agent and will not be released to the Solar Garden LLC until the Closing Date. To the extent any such Person is not admitted to the Solar Garden LLC, its Capital Contribution and interest earned thereon will be promptly released to such Person after such determination has been made.

To the extent any Solar Garden Member is also a Pre-Development Lender, the principal amount due to such Pre-Development Lender under the Pre-Development Loan Note, shall be credited against the Capital Contribution amount due and payable under Section 3.02(b).

(d) The Net Purchase Price shall be determined by the Solar Garden LLC Manager prior to the Closing Date by taking the Base Purchase Price and reducing it by (i) the amount of the Commonwealth Solar Rebate which is applicable to each Solar Garden Member and (ii) then further reducing that amount to take into account the anticipated Cash Grant. In order to determine the amount of the reduction for purposes of clause (i) of the initial sentence of this Section 3.02(d), the Base Purchase Price payable by each Solar Garden Member shall be reduced by an amount equal to the Commonwealth Solar Rebate attributable to the net metered generation, if any, anticipated in connection with such Investor in an amount equal to (x) \$4,250 for Investors as to whose property Commonwealth Solar Rebates were applied for and were reserved under the Block 8 Program and who purchase five or more Units, with the amount thereof reduced on a Pro Rata Share basis for such Investors who acquire fewer than five (5) Units and (y) \$2,250 for Investors as to whose property Commonwealth Solar Rebates were applied for and were reserved under the Block 9 Program and who purchase five or more Units, with the amount thereof reduced on a Pro Rata Share basis for such Investors who acquire fewer than five (5) Units. In order to determine the amount of the reduction for purposes of clause (ii) of the initial sentence of this Section 3.02(d), the Net Purchase Price payable by each Solar Garden Member shall also include a credit in the amount of 30% of the Base Purchase Price as so reduced in connection with the Commonwealth Solar Rebate, reflecting in the aggregate the Project LLC's anticipated Cash Grant.

For example, a five (5) Unit Investor whose property Commonwealth Solar Rebates were applied for and reserved under the Block 8 Program would pay a total price of \$16,275 based on the following calculations:

Base Purchase Price: \$5,500 per Unit x 5 Units =	\$27,500
Less:	
(i) Commonwealth Solar Rebate	<u>\$4,250</u>
Price Prior to Anticipated Cash Grant: (\$27,500 - \$4,250) =	\$23,250
(ii) Further Reduction for Anticipated Cash Grant: (\$23,250 x 30%) =	<u>\$6,975</u>
Total Net Purchase Price: (\$23,250 - \$6,975) =	<u>\$16,275</u>

(e) Upon the request of the Solar Garden LLC Manager, additional Capital Contributions will be required to be made by each Solar Garden Member at the times funds are needed to make additional capital contributions to the Project LLC for Cost Overruns or Operating Deficits or to fund Operating Deficits at the Solar Garden LLC level, to the extent applicable, which shall be funded by each of the Solar Garden Members based on his or her Pro Rata Share. Such additional Capital Contributions shall be paid by each Solar Garden Member, regardless of the Payment Option selected, within five (5) Business Days of receipt from the

Solar Garden LLC Manager of a notice reflecting that payment of such additional Capital Contribution is due.

(f) The Capital Contribution obligations of Solar Garden Members electing the Installment Method shall be reflected in a form of written obligation (the “Promissory Obligation”) executed and delivered to the Solar Garden LLC by each such Solar Garden Member. Any payment or credit of Capital Contribution to the Solar Garden LLC shall be applied against the corresponding Promissory Obligation.

(g) All Solar Garden Members will grant a security interest to the Solar Garden LLC in their Units to secure their obligations to make additional Capital Contributions under Section 3.02(e), and in the case of Solar Garden Members electing to pay their Capital Contribution under the Installment Method, the security interest shall also secure the obligations of such Solar Garden Members to make payments with respect to the Promissory Obligation.

(h) The Solar Garden LLC has the authority to borrow funds to bridge the shortfall of Capital Contributions due from the Solar Garden Members electing the Installment Method and is authorized to collaterally assign any Promissory Obligation and, unless otherwise provided in the Promissory Obligation or related Investor Subscription Documents, the related security interests attached thereto to any Person to serve as collateral security for obligations of the Solar Garden LLC; any such assignee may resell or reassign its interest in any such Promissory Obligation to any other Person. Each principal portion of each payment from a Solar Garden Member under a Promissory Obligation shall be deemed a Capital Contribution to the Solar Garden LLC even if such payment is made to a successor holder of such Promissory Obligation. In addition, if the Solar Garden LLC sells or collaterally assigns a Promissory Obligation, the Solar Garden LLC Manager will assume for the purposes of this Solar Garden LLC Agreement that all payments under such Promissory Obligation are made when due thereunder unless otherwise directed by such successor holder.

(i) Inasmuch as each Solar Garden Member will rely upon the availability of the Capital Contributions of all Solar Garden Members to the Solar Garden LLC to make the payments provided for in this Solar Garden LLC Agreement, the obligation of each Solar Garden Member to pay its Capital Contributions, as and when due, shall be absolute and unconditional, any statute, constitution or rule of law to the contrary notwithstanding.

(j) Each Solar Garden Member shall, as a condition of being admitted to the Solar Garden LLC, execute this Solar Garden LLC Agreement, or a counterpart thereto, or some other writing that evidences his/her/its agreement to the terms of this Solar Garden LLC Agreement. The names and the business or mailing addresses of the Solar Garden Members, their Capital Contributions and the number of Units held shall be set forth in the Solar Garden LLC Register.

(k) To accomplish the purpose of this Section 3.02, the Solar Garden LLC Manager is hereby authorized and hereby agrees to do all things necessary to admit such Solar Garden Members, including, but not limited to, perfecting an exemption from the securities registration requirements in connection with the Offering under the Securities Act of 1933, as amended, pursuant to the rules and regulations of the Securities and Exchange Commission,

qualifying the Units for sale with state and blue sky securities regulatory authorities or perfecting exemptions from qualification upon such terms and conditions as the Solar Garden LLC Manager may deem advisable and the Solar Garden Members agree to cooperate fully with the Solar Garden LLC Manager in connection with the foregoing activities.

Section 3.03      Solar Garden LLC Capital.

(a)      No Member shall be paid interest on any Capital Contribution.

(b)      The Solar Garden LLC shall not redeem or repurchase any Units, and no Solar Garden Members shall have the right to withdraw or abandon its Solar Garden Member Interest prior to the dissolution and winding up of the Solar Garden LLC except as specifically provided in this Section 3.03(b) and no Member shall have the right to receive any return of its Capital Contribution except as specifically provided in Sections 4.06 and 10.02. No Capital Contribution may be returned in the form of property other than cash, except as specifically provided herein or required by applicable law. No Solar Garden Member may withdraw from the Solar Garden LLC or abandon its Solar Garden Member Interest in the Solar Garden LLC without the written consent of the Solar Garden LLC Manager.

Section 3.04      Liability of Members.

(a)      No Member shall be liable for the debts, liabilities, contracts or any other obligations of the Solar Garden LLC. A Member shall be liable only to make its Capital Contribution and shall not be required to lend any funds to the Solar Garden LLC or, after its initial Capital Contribution is paid pursuant to Section 3.02(b), to make any further Capital Contribution to the Solar Garden LLC or to repay to the Solar Garden LLC, any Member, or any creditor of the Solar Garden LLC any portion of any negative balance in its Capital Account. Notwithstanding the foregoing in this Section 3.04, in the event the Solar Garden LLC is required, pursuant to Applicable Law, to return to the Project LLC any funds previously distributed by the latter to the Solar Garden LLC, which funds have been distributed by the Solar Garden LLC, in turn, to the Solar Garden Members hereunder, the Solar Garden Member shall be required to promptly return to the Solar Garden LLC that portion of such Solar Garden LLC distribution (in the same proportion as they originally received such funds) as shall be required by the Solar Garden LLC to meet its obligations to return funds to the Project LLC. In addition, each Solar Garden Member is obligated to make additional Capital Contributions to fund its Pro Rata Share of any Cost Overrun and/or Operating Deficit as provided in Section 3.02(c).

(b)      The Members shall have the liability of a member under the Act as that liability may exist from time to time.

Section 3.05      Defaults.

In the event any Solar Garden Member fails to pay any of its Capital Contributions on or prior to the time when due, it shall be deemed to be in default hereunder (the “Defaulting Investor”), and the amount in default shall bear interest from the date of default at a rate of 15% per annum (or such lesser rate as shall be the maximum permitted by law). Upon the occurrence of such default, the Solar Garden LLC Manager may pursue any and all available legal remedies

against the Defaulting Investor, including those under this Solar Garden LLC Agreement and the Subscription Documents, and shall have the option to allow a Person or Persons on Solar Garden Member Waiting List to purchase for the price hereinafter specified in this Section 3.05, all or a part of the Defaulting Investor's Interest as a Solar Garden Member including all distributions attributable to such Interest, with respect to the period commencing on the first Day of the calendar month in which such default occurs (the "Default Purchase Option"). Whether or not the Member Default Purchase Option is exercised, the Defaulting Investor shall have no right to receive distributions and shall have no voting rights with respect to its Solar Garden Member Interest so long as it is a Defaulting Investor, but any successor(s) to the Solar Garden Member Interest of the Defaulting Investor shall receive all of such rights if it purchases the entire Solar Garden Member Interest or the allocable portion of such rights if it purchases less than the entire Solar Garden Member Interest.

Any purchaser of the Solar Garden Member Interest of a Defaulting Investor shall become a Substitute Solar Garden Member to the extent of any portion of any Solar Garden Member Interest of a Solar Garden Member which such purchaser may purchase hereunder.

The aggregate purchase price to be paid to the Defaulting Investor pursuant to this Section 3.05 shall be an amount equal to \$2,500 per Unit, which amount shall be reduced by \$100 per Unit on each anniversary of the Placed In Service date for the Project less the sum of any expenses incurred by such purchaser(s) of the Solar Garden Member Interest of the Defaulting Investor and/or expenses of the Solar Garden LLC incurred in connection with the sale of the Solar Garden Member Interest of the Defaulting Investor. If any of the purchase options set forth in this Section 3.05 shall be exercised, title to the Solar Garden Member Interest so purchased shall vest in the purchaser or purchasers upon the execution of the requisite assignment documents by the purchaser or purchasers, the Solar Garden LLC Manager, and the Defaulting Investor or its attorney-in-fact appointed under Section 12.13 or otherwise, and the amendment of the Solar Garden LLC Register in respect of such transaction; however, each purchaser shall pay to the Defaulting Investor its pro rata share of the purchase price for such Solar Garden Member Interest. Concurrently with such purchase, each purchaser shall also (i) pay to the Solar Garden LLC its share on a pro rata basis of any of the unpaid and then due Capital Contributions of the Defaulting Investor and (ii) assume all other obligations of the Defaulting Investor, if any, to the Solar Garden LLC, pro rata in accordance with the portion of the Defaulting Investor's Solar Garden Member Interest purchased.

Notwithstanding the foregoing, however, the obligations of the Defaulting Investor to the Solar Garden LLC hereunder shall not be extinguished by the existence of any such option, or by its exercise, but only by, and to the extent of, the Capital Contributions made in its place by the purchaser of its Solar Garden Member Interest of a Defaulting Investor hereunder.

In addition to the procedure provided above in this Section 3.05, whether or not any or all of the Solar Garden Member Interest of a Defaulting Investor remains unpurchased after following such procedure, the Solar Garden LLC Manager may (i) pursue any and all available legal remedies against the Defaulting Investor in order to collect the amount owed by the Defaulting Investor to the Solar Garden LLC and/or (ii) without being under any obligation to do so, negotiate a settlement with the Defaulting Investor providing for extensions of time of payment by the Defaulting Investor, or for the purchase of such Defaulting Investor's Interest by

any Person, or any other compromise within the meaning of Section 28 of the Act, in each case on such terms and conditions as may be reasonably acceptable to the Solar Garden LLC Manager and the Defaulting Investor without the need to obtain the consent of any of the other Solar Garden Members.

Notwithstanding the foregoing, this Section 3.05 shall be subject in all respects to the rights of any successor holder or assignee of the Promissory Obligation of the Defaulting Investor, under such Promissory Obligation, the corresponding security interest or any other documents or agreements related to such Promissory Obligation.

Section 3.06     Capital Accounts. The Solar Garden LLC shall maintain a Capital Account for each Member in accordance with Treasury Regulations Section 1.704-1(b) adopted pursuant to Section 704(b) of the Code. Unless otherwise provided in such Treasury Regulations, each Member's Capital Account shall be credited with (a) Capital Contributions to the Solar Garden LLC by that Member; (b) the Net Income of the Solar Garden LLC allocable to that Member; and (c) any items in the nature of income or gain that are specially allocated pursuant to Sections 4.04 or 4.05, hereof; and which account shall be debited with (x) any Distribution to that Member; (y) the Net Loss of the Solar Garden LLC allocable to that Member; and (z) any items in the nature of loss or deduction that are specially allocated pursuant to Sections 4.04 or 4.05, hereof. In the event the Book Value of Solar Garden LLC assets are adjusted, the Capital Accounts of all Members shall be adjusted to reflect such adjustment as if the Solar Garden LLC recognized gain or loss equal to the amount of such aggregate adjustment. The amounts debited or credited to Capital Accounts shall be adjusted with respect to any liabilities that are secured by such contributed or distributed property or that are assumed by the Solar Garden LLC or the Members, in the event the Solar Garden LLC Manager shall determine such adjustments are necessary or appropriate pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv). All Solar Garden LLC expenditures which constitute syndication expenses as defined in Treasury Regulations not specially allocated pursuant to the foregoing provisions of this Section 3.06 shall be allocated among the Members in proportion to their Units.

#### **ARTICLE IV ALLOCATIONS OF NET INCOME, NET LOSSES, AND DISTRIBUTIONS**

It is the intention of the Solar Garden Members and the Solar Garden LLC Manager that the Solar Garden LLC be taxed as a corporation for federal and Massachusetts income and excise tax purposes for at least the first five years after the Project has been Placed In Service. Accordingly, notwithstanding any provision in this Solar Garden LLC Agreement to the contrary, unless and until the Solar Garden Members vote to the contrary, (A) the Solar Garden LLC shall file such elections, returns, and other documents as may be appropriate or necessary to be taxed as a corporation for federal and Massachusetts income and excise tax purposes, (B) each Solar Garden Member shall be treated as owning shares of the Solar Garden LLC equal in number to the number of Units held by such Solar Garden Member and (C) all Capital Contributions made by the Solar Garden Members to the Solar Garden LLC shall be considered capital contributions to a corporation for federal and Massachusetts income and excise tax purposes, and all distributions made by the Solar Garden LLC to the Solar Garden Members

shall be taxed in the manner such distributions would be taxed in accordance with the federal and Massachusetts income and excise tax law that applies to corporations. The Solar Garden LLC Manager is authorized and directed to retain such amounts as he considers necessary or appropriate to pay any tax or similar entity-level liabilities as may apply to the Solar Garden LLC and to withhold taxes, if applicable, with respect to any amounts distributed or distributable to the Solar Garden Members, including any such taxes or liabilities that may apply if it is determined that the Solar Garden LLC should no longer elect to be taxed as a corporation for federal or Massachusetts income or excise tax purposes. If at some date in the future, the Solar Garden Members and Solar Garden LLC Manager determine to treat the Solar Garden LLC as a partnership for federal and Massachusetts income and excise tax purposes, then upon such conversion the Solar Garden LLC Manager shall compute the then Capital Account balance of such Solar Garden Member which shall be determined starting with the Net Purchase Price for each Solar Garden Member as would be adjusted from time to time starting with the Closing Date as if the Solar Garden LLC were being treated as a partnership for federal and Massachusetts income and excise tax purposes commencing with the Closing Date.

Section 4.01     General Allocations.

(a) Except as otherwise provided in this Section 4.01 and Section 4.02, Net Income and Net Losses, for any Fiscal Year of the Solar Garden LLC shall be allocated among the Solar Garden Members in proportion to their Pro Rata Share.

(b) The items of income, gain, loss and expense of the Solar Garden LLC comprising Net Income or Net Loss for a Fiscal Year with regard to any Capital Transactions shall be allocated among the Persons who were Members during such Fiscal Year in a manner that will, as nearly as possible, cause the Capital Account balance of each Member at the end of such Fiscal Year to equal the excess (which may be negative) of:

(i) the amount of the hypothetical distribution (if any) that such Member would receive if, on the last Day of the Fiscal Year, (x) all Solar Garden LLC assets, including cash were sold for cash in an amount equal to their Book Value, taking into account any adjustments thereto for such Fiscal Year, (y) all Solar Garden LLC liabilities were satisfied in cash according to their terms (limited, with respect to each Nonrecourse Debt or Partner Nonrecourse Debt in respect of such Member, to the Book Value of the assets securing such liability), and (z) the net proceeds thereof (after satisfaction of such liabilities) were distributed in full pursuant to Section 4.06 and Section 10.02, as applicable, over

(ii) the sum of (x) the amount, if any, without duplication, that such Member would be obligated to contribute to the capital of the Solar Garden LLC, (y) such Member's share of Partnership Minimum Gain determined pursuant to Regulations Section 1.704-2(g) and (z) such Member's share of Partner Nonrecourse Debt Minimum Gain determined pursuant to Regulations Section 1.704-2(i)(5), all computed as of the hypothetical sale described in Section 4.01(a)(i) above.

(c) Notwithstanding anything to the contrary in this Section 4.01, the amount of items of Solar Garden LLC expense and loss allocated pursuant to this Section 4.01 to any

Member shall not exceed the maximum amount of such items that can be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year, unless each Member would have an Adjusted Capital Account Deficit. All such items in excess of the limitation set forth in this Section 4.01(c) shall be allocated first, to Members who would not have an Adjusted Capital Account Deficit, pro rata, in proportion to their Capital Account balances, adjusted as provided in clauses (i) and (ii) of the definition of Adjusted Capital Account Deficit, until no Member would be entitled to any further allocation, and thereafter, shall be allocated among the Solar Garden Members in proportion to their Pro Rata Share.

Section 4.02 Special Allocations. Notwithstanding anything to the contrary contained in Section 4.01, the following special allocations in all events apply in determining the allocation of Net Income and Net Losses, among the Members and are made prior to the allocations required under Section 4.01:

(a) Partnership Minimum Gain Chargeback. Notwithstanding any other provision of this Article IV, if there is a net decrease in Partnership Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Solar Garden LLC income and gain for such year (and, if necessary, subsequent years) in proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in Partnership Minimum Gain, determined in accordance with Section 1.704-2(g)(2) of the Treasury Regulations. The items to be so allocated shall be determined in accordance with Section 1.704-2(f) of the Treasury Regulations. This Section 4.02(a) is intended to comply with the minimum gain chargeback requirement of the Treasury Regulations and shall be interpreted consistently therewith.

(b) Partner Minimum Gain Chargeback. Notwithstanding any other provision of this Article IV except Section 4.02(a), if there is a net decrease in Partner Minimum Gain attributable to a Partner Nonrecourse Debt during any Fiscal Year, each Member with a share of the Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations, shall be specially allocated items of Solar Garden LLC income and gain for such year (and, if necessary, subsequent years) in proportion to, and to the extent of, an amount equal to such Member's share of the net decrease in Partner Minimum Gain attributable to such Partner Nonrecourse Debt, determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations. The items to be so allocated shall be determined in accordance with Section 1.704-2(i)(5) of the Treasury Regulations. This Section 4.02(b) is intended to comply with the Partner Minimum Gain chargeback requirement of the Treasury Regulations and shall be interpreted consistently therewith.

(c) Qualified Income Offset. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6) of the Treasury Regulations, items of Solar Garden LLC income and gain shall be specially allocated to each such Member in an amount and manner sufficient to eliminate, to the extent required by the Treasury Regulations, the Adjusted Capital Account Deficit of such Member as quickly as possible, provided that an allocation pursuant to this Section 4.02(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided for in this Article IV have been tentatively made as if this Section 4.02(c) were not in the Solar Garden LLC Agreement.

(d) Gross Income Allocation. In the event any Member has a deficit Capital Account at the end of any Fiscal Year which is in excess of the sum of (i) the amount such Member is obligated to restore pursuant to any provision of this Solar Garden LLC Agreement, and (ii) the amount such Member is deemed to be obligated to restore pursuant to Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Solar Garden LLC income and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 4.02(d) shall be made only if and to the extent that such Member would have a deficit Capital Account in excess of such sum after all other allocations provided for in this Article IV have been tentatively made as if this Section 4.02(d) and Section 4.02(c) hereof were not in the Solar Garden LLC Agreement.

(e) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year or other period shall be specially allocated among the Solar Garden Members in accordance with each Solar Garden Member's Pro Rata Share.

(f) Partner Nonrecourse Deductions. Any Partner Nonrecourse Deductions for any Fiscal Year or other period shall be allocated to the Member who bears the economic risk of loss with respect to the Partner Nonrecourse Debt to which such Partner Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(g) Certain Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Solar Garden LLC asset, pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Section 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4) of the Treasury Regulations, to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's Solar Garden LLC Interests, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated among the Solar Garden Members in accordance with their Pro Rata Share in the Solar Garden LLC in the event Section 1.704-1(b)(2)(iv)(m)(2) of the Treasury Regulations applies, or to the Member to whom such distribution was made in the event Section 1.704-1(b)(2)(iv)(m)(4) of the Treasury Regulations applies.

Section 4.03 Curative Allocations. The "Regulatory Allocations" consist of the allocations to a Member (or his or her predecessor) under Sections 4.02(a), (b), (c), (d), (e) and (f) hereof. Notwithstanding any other provisions of this Article IV (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating other items of income, gain, loss and deduction among the Members so that, to the extent possible, the net amount of such allocations of other items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each such Member if the Regulatory Allocations had not occurred. The Solar Garden LLC Manager shall have reasonable discretion, with respect to each Fiscal Year, to (i) apply the provisions of this Section 4.03 in whatever order is likely to minimize the economic distortions that might otherwise result from the Regulatory Allocations, and (ii) divide all allocations pursuant to this Section 4.03 among the Members in a manner that is likely to minimize such economic distortions.

Section 4.04 Tax Allocations; Code Section 704(c). In accordance with Code Section 704(c) and the Treasury Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of Solar Garden LLC shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Solar Garden LLC for federal income tax purposes and its Book Value. In the event the Book Value of any Solar Garden LLC asset is adjusted pursuant to subparagraph (b) of the definition of Book Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for Federal income tax purposes and its Book Value in the same manner as under Code Section 704(c) and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Solar Garden LLC Manager in any manner that reasonably reflects the intent of this Solar Garden LLC Agreement. Allocations pursuant to this Section 4.04 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any person's Capital Account or share of Net Income, Net Losses, other items, or Distributions pursuant to any provision of this Solar Garden LLC Agreement.

Section 4.05 Substituted Members. If a Substituted Solar Garden Member is admitted to the Solar Garden LLC on different dates during any Fiscal Year, the Net Income or Net Losses allocated to the Members for each Fiscal Year shall be allocated among them in accordance with the interests each holds in the Solar Garden LLC from time to time in accordance with Code Section 706, using any convention permitted by law and selected by the Solar Garden LLC Manager.

Section 4.06 Distributions. Subject to applicable law and to limitations and rights contained elsewhere in this Solar Garden LLC Agreement, Distributable Cash Flow shall be distributed among the Solar Garden Members in accordance with their respective Pro Rata Shares.

Section 4.07 Tax Matters Partner. All Members hereby acknowledge and agree that Worth Robbins in his capacity as a Member shall be the "Tax Matters Partner" pursuant to the Code in connection with all taxes including, without limitation, any audit of the federal income tax returns of the Solar Garden LLC. If the Member designated as Tax Matters Partner withdraws or is removed from the Solar Garden LLC, the Members shall designate a successor Tax Matters Partner in accordance with applicable Treasury Regulations and will reflect such designation in the Solar Garden LLC records. Any successor Tax Matters Partner shall notify the IRS of its designation for such years as well as for all prior years. The Solar Garden LLC may engage accountants and legal counsel to assist the Tax Matters Partner in discharging its duties hereunder. Notwithstanding the foregoing, to the maximum extent permitted by the Code and related regulations, the Tax Matters Partner, agrees not to take any of the following actions without the Consent of the Solar Garden Members:

(a) enter into any agreement with the IRS to extend the period for assessing any tax that is attributable to any item required to be taken into account by a Solar Garden Member for tax purposes, or any item affected by such item;

(b) settle any audit with the IRS concerning the adjustment of any Solar Garden LLC

item;

(c) commence or settle any Tax Court case or other judicial or administrative proceeding;

(d) file a request for an administrative adjustment with the IRS or file a petition for judicial review with respect to such administrative adjustment; or

(e) intervene in any action brought by a Solar Garden Member for judicial review of a final adjustment with the IRS.

The Solar Garden LLC shall indemnify and reimburse the Tax Matters Partner and the Solar Garden Members for all expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liabilities of the Members. The payment of all such expenses shall be made before any distributions are made from Distributable Cash or any discretionary Reserves are set aside by the Solar Garden LLC Manager. Notwithstanding the foregoing, the Tax Matters Partner shall defend, indemnify, and hold harmless the Solar Garden LLC and the Solar Garden Members from any liability, loss, damage, fees, costs and expenses incurred by reason of any demands, claims, suits, actions or proceedings arising out of the Tax Matters Partner's gross negligence, material breach of this Solar Garden LLC Agreement, breach of fiduciary duty or willful misconduct.

## **ARTICLE V**

### **RIGHTS, POWERS AND DUTIES OF THE SOLAR GARDEN LLC MANAGER**

Section 5.01 Business Management. With the exception of the rights, powers and duties of the Tax Matters Partner set forth in Section 4.07, the Solar Garden LLC Manager shall be exclusively responsible for the conduct of the Solar Garden LLC's business and affairs.

Section 5.02 Powers. Subject to Section 5.03 and the other provisions of this Solar Garden LLC Agreement, the Solar Garden LLC Manager shall have all authority, rights, and powers generally conferred by law and shall have all the authority, rights, and powers which it deems necessary or appropriate to effect the purposes of the Solar Garden LLC, including, without limitation, the following subject to the limitations stated below:

(a) To acquire, own, hold, encumber, assign, sell, dispose, vote on behalf of the Solar Garden LLC with respect to, dispose of and otherwise deal with the Project LLC.

(b) In connection with the investment in the Project LLC, to exercise all powers afforded members in the Project LLC, including, without limitation, the power (i) to execute, deliver and perform the terms, covenants and obligations of the Project LLC Agreement and all other agreements, instruments, and other documents as may be necessary or appropriate in connection with the business and operations of the Solar Garden LLC, (ii) to give or withhold the Solar Garden LLC's consent to any action proposed to be taken by the Solar Garden LLC for which such consent is required, including the exchange, transfer, conveyance, donation or sale of the Project or the refinancing of any mortgage, (iii) to cause the Solar Garden LLC to vote to

amend the Project LLC Agreements in such manner as to reduce the Solar Garden LLC's interest in the Solar Garden LLC, to vote to reduce the Solar Garden LLC's interest in the profits, losses, and cash distributions of the Project LLC or to assign (or grant a security interest) in a part or all of the Solar Garden LLC's interest in the Project LLC, and (iv) to amend the Project LLC Agreement in the manner provided therein and to vote on any issue for which the Solar Garden LLC, as a member the Project LLC, is provided with such right under the Project LLC Agreement.

(c) To employ, contract and deal with, from time to time, any Persons, in connection with the management and operation of the Solar Garden LLC's business, including any Member or Affiliate of any Member or the Solar Garden LLC Manager; *provided, however*, that such fees, prices, or other compensation paid by the Solar Garden LLC or the Project LLC therefor is, in the judgment of the Solar Garden LLC Manager, reasonable, or competitive, with the fees, prices, or compensation customarily paid for similar property or services in the geographic area.

(d) To acquire, by purchase or otherwise, hold, dispose of and otherwise deal with such real or personal property as may be necessary, convenient or incidental to the accomplishment of the purposes of the Solar Garden LLC.

(e) To bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Solar Garden LLC.

(f) To pay as a Solar Garden LLC expense any and all Organizational and Offering Expenses.

(g) To deposit, withdraw, invest, pay, retain, and distribute the funds of the Solar Garden LLC in a manner consistent with this Solar Garden LLC Agreement.

(h) To make or to revoke such elections under the Code and other relevant tax laws as to the treatment of items of income, gain, loss, deduction, and as to all other relevant matters, as the Solar Garden LLC Manager deem necessary or appropriate and in the best interest of the Solar Garden Members, including, without limitation, elections referred to in Section 754 of the Code, selection of the manner and method of determining depreciation of the capital assets of the Solar Garden LLC Manager, determination of which items of cash outlay are to be capitalized or treated as current expenses, and selection of the method of accounting and bookkeeping procedures to be used by the Solar Garden LLC.

(i) To enter into any kind of activity and to perform and carry out contracts of any kind necessary to, or in connection with, or incidental to the accomplishment of the purposes of the Solar Garden LLC, so long as said activities and contracts may be lawfully carried on or performed by a limited liability company under the laws of the State.

(j) To place record title to, or the right to use Solar Garden LLC assets in the manner or names of a nominee or nominees, or trustee or trustees, for any purpose convenient or beneficial to the Solar Garden LLC.

(k) To borrow money, issue evidence of indebtedness and enter into agreements related or incident to the foregoing in furtherance of any or all of the purposes or business of the Solar Garden LLC on such terms and conditions as the Solar Garden LLC Manager shall in its sole discretion determines, and to secure the same by a grant of security interests in the assets of the Solar Garden LLC, including, without limitation, the Promissory Obligation and Security Agreements, as the Solar Garden LLC Manager shall in its sole discretion determine.

(l) To exercise all rights and powers under the Act unless such right or power is expressly limited herein or under the Act.

(m) To employ agents, accountants, attorneys, consultants and other Persons necessary or appropriate to carry out the business and operations of the Solar Garden LLC, and to pay fees, expenses and other compensation to such Persons.

(n) To conduct the Offering and take any and all actions necessary, appropriate or incidental thereto.

(o) To establish Reserves in such amounts and from such sources as the Solar Garden LLC Manager deems appropriate, if any, and to increase or decrease such Reserves from time to time as the Solar Garden LLC Manager deems appropriate and to place Reserves or any other funds not being immediately distributed to the Members or used for other Solar Garden LLC business in Temporary Investments.

(p) To execute, acknowledge, and deliver any and all instruments to effectuate the foregoing.

#### Section 5.03 Restrictions on Authority.

(a) Notwithstanding Section 5.02, the Solar Garden LLC Manager shall not, without the affirmative vote or Consent of the Solar Garden Members holding at least two-thirds of the Units: (i) sell or exchange all, or substantially all, of the assets of the Solar Garden LLC; (ii) cause the Solar Garden LLC to file for Bankruptcy; (iii) merge or consolidate the Solar Garden LLC with or into another limited liability company, partnership, corporation or other business entity; (iv) sell or donate the Solar Garden LLC's Project LLC Interest or consent to the sale or donation of the Project by the Project LLC, provided, however, that no such consent shall be required if such sale or transfer of the Project is in connection with a mortgage foreclosure, deed in lieu of foreclosure or other involuntary disposition; (v) acquire an interest in any entity other than the Project LLC; (vi) change the nature of the Solar Garden LLC's business; (vii) cause the Solar Garden LLC to settle, compromise, mediate or otherwise relinquish any claim (actual or prospective), or to release, waive or diminish any material Solar Garden LLC rights in any litigation or arbitration matter involving a claim in excess of \$10,000; (viii) admit any Person as a Member, except as provided for in this Solar Garden LLC Agreement; or (ix) with the exception of the Angel Financing, incur debt in addition to the Pre-Development Loan or Transaction Loan in excess of \$100,000 in the aggregate at any one time outstanding on the general credit of the Solar Garden LLC.

(b) The Solar Garden LLC Manager shall have no authority to do any act in violation of Applicable Law or which is subject to the consent or approval of some or all of the Solar Garden Members pursuant to the provisions of this Solar Garden LLC Agreement without the prior Consent of the required percentage in interest of Solar Garden Members. The Solar Garden LLC Manager shall have no authority to cause the Solar Garden LLC to perform any act that would subject the Solar Garden Members to liability for Solar Garden LLC obligations.

Section 5.04 Other Activities. The Solar Garden LLC Manager, and its officers, directors and employees (if applicable), shall be required to devote only so much of its and their time as the Solar Garden LLC Manager deems necessary for the proper management of Solar Garden LLC business. The Solar Garden LLC Manager, the Members and any of their Affiliates may engage or possess an interest, independently or with others, in the Solar Garden LLC, the Project LLC and in other businesses or ventures of every nature and description, including without limitation development and operation of solar facilities in competition with the Solar Garden LLC, and neither the Solar Garden LLC, the Solar Garden LLC Manager nor any Member shall have any rights in or to such ventures or the income or profits derived therefrom.

Section 5.05 Distributions. Each Member shall look solely to the assets of the Solar Garden LLC for all distributions and share of profits or losses and shall have no recourse therefor (upon dissolution or otherwise) against any other Member. No Member shall have any right to demand or receive property other than money upon dissolution and termination of the Solar Garden LLC, except as otherwise expressly provided for herein.

Section 5.06 Solar Garden LLC Expenses. The Solar Garden LLC shall pay directly, or shall reimburse the Solar Garden LLC Manager for, all costs and expenses of the Solar Garden LLC, including without limitation: (a) all fees and expenses incurred by the Solar Garden LLC Manager in connection with the formation of the Solar Garden LLC and the sale of the Units; (b) all expenses incurred in connection with the purchase, ownership or sale of any Solar Garden LLC investments or other assets; (c) all professional fees and expenses reasonably incurred by or on behalf of the Solar Garden LLC; (d) all travel and other expenses reasonably incurred by the Solar Garden LLC Manager in connection with Solar Garden LLC business; (e) all costs and expenses of preparing the reports and statements required by this Solar Garden LLC Agreement; and (f) all costs and expenses of obtaining and maintaining any insurance carried by the Solar Garden LLC.

Section 5.07 Limitation of Liability; Indemnification of Solar Garden LLC Manager. The Solar Garden LLC Manager and its Affiliates shall have no liability to the Solar Garden LLC or any Member for any loss suffered by the Solar Garden LLC which arises out of any action or inaction of an Solar Garden LLC Manager or its Affiliates if such Solar Garden LLC Manager or its Affiliates, in good faith, determined that such course of conduct was in the best interest of the Solar Garden LLC and such course of conduct did not constitute gross negligence, material breach of this Solar Garden LLC Agreement, breach of fiduciary duty or willful misconduct of such Solar Garden LLC Manager or such Affiliates. The Solar Garden LLC Manager and its Affiliates shall be indemnified by the Solar Garden LLC against any losses, judgments, liabilities, expenses, and amounts paid in settlement of any claims sustained by them in connection with the Solar Garden LLC, provided that the same were not the result of gross negligence, material breach of this Solar Garden LLC Agreement, or willful misconduct on

the part of such Solar Garden LLC Manager or such Affiliates. The Solar Garden LLC shall pay or advance to the Solar Garden LLC Manager or its Affiliates the cost and expenses, including reasonable attorneys' fees, of investigation and defense of any matter including in any action where the Solar Garden LLC Manager was made a party to an action in the right of the Solar Garden LLC provided that the Solar Garden LLC Manager or its Affiliates shall have entered into an agreement to reimburse the Solar Garden LLC for such fees and expenses if it is finally determined that the actions were committed in bad faith or were the result of active and deliberate dishonesty and were material to the cause of action so adjudicated or that the Solar Garden LLC Manager or its Affiliates gained in fact a financial profit or other advantage to which such Person was not entitled.

The Solar Garden LLC shall not incur the cost of that portion of any insurance, other than public liability insurance, which insures any party against any liability the indemnification of which is herein prohibited.

The indemnification provided in this Section shall be payable solely from the assets of the Solar Garden LLC and no Member shall be personally liable therefor.

Section 5.08 Indemnity. The Solar Garden LLC Manager shall defend, indemnify, and hold harmless the Solar Garden LLC and the Solar Garden Members from any liability, loss, damage, fees, costs and expenses incurred by reason of any demands, claims, suits, actions or proceedings arising out of the Solar Garden LLC Manager's gross negligence, material breach of this Solar Garden LLC Agreement, breach of fiduciary duty or willful misconduct.

Section 5.09 Representations, Warranties and Covenants of the Solar Garden LLC Manager. As of the date hereof, and, with the exception of Section 5.09(j), as of the date of each Capital Contribution by the Solar Garden Members hereunder, the Solar Garden LLC Manager hereby represents, warrants and covenants to the Solar Garden LLC and to the Solar Garden Members as follows:

(a) the Solar Garden LLC is and will continue to be a duly formed limited liability company validly existing and in good standing under the laws of the State and has undertaken and shall continue to undertake all acts, including without limitation, the filing of all certificates and the payment of all fees, taxes, and other sums necessary for the Solar Garden LLC to operate as a limited liability company in the State and to enable the Solar Garden LLC to engage in its business. The consummation of all transactions contemplated herein and in the Transaction Documents to be performed by the Solar Garden LLC, the Solar Garden LLC Manager or any of their respective Affiliates does not and will not result in any material breach or violation of, or default under, any governing instrument of the Solar Garden LLC, the Solar Garden LLC Manager or any of their respective Affiliates or any agreements by which the Solar Garden LLC Manager or any of their respective Affiliates or any of its or their property is bound, or under any Applicable Law;

(b) the Solar Garden LLC Manager has not acted in any manner that will cause (a) the Solar Garden LLC to fail to qualify as a limited liability company under the Act or (b) the Solar Garden Members to be liable for Solar Garden LLC obligations other than to the extent of their required Capital Contributions or as otherwise provided in the Act;

(c) the Solar Garden LLC Manager, if any entity, is duly and validly formed and is validly existing and in good standing under the laws of its State of formation, with full power and authority to enter into and perform its obligations hereunder;

(d) subject to the obtaining by the Solar Garden Members of any consents or approvals of any Governmental Authority, or any other Person, necessary, all consents or approvals of any Governmental Authority, or any other Person, necessary in connection with the formation of the Solar Garden LLC and the admission of the Solar Garden Members have been obtained by the Solar Garden LLC Manager, and the Solar Garden LLC has taken all action under the laws of the State and any other applicable jurisdiction and has complied with all filing requirements necessary under the Act for the preservation of the limited liability of the Solar Garden Members;

(e) no event of Bankruptcy has occurred with respect to the Solar Garden LLC, the Solar Garden LLC Manager or any entity affiliated with the Solar Garden LLC Manager;

(f) neither the Solar Garden LLC, the Solar Garden LLC Manager nor any of their respective Affiliates is presently under any commitment to any real estate broker, rental agent, finder, syndicator or other intermediary with respect to the Project or any portion thereof except for the arrangements specifically described in this Solar Garden LLC Agreement or any of the Transaction Documents and the arrangements previously disclosed in writing;

(g) no default by any entity affiliated with the Solar Garden LLC Manager has occurred or is continuing (nor has there occurred any continuing event which, with the giving of notice or the passage of time or both, would constitute such a default in any material respect) under the Transaction Documents which would have a Material Adverse Effect on the Solar Garden LLC and the Transaction Documents are in full force and effect (except to the extent fully performed in accordance with their respective terms and constitutes the valid, binding and enforceable obligation of the parties thereto). All conditions precedent to the effectiveness of each of the Transaction Documents have been satisfied or waived in writing and no event or other condition exists which entitles any party thereto to exercise any right of termination or would otherwise result in a termination of any of the Transaction Documents;

(h) the execution and delivery of this Solar Garden LLC Agreement, the incurrence of the obligations set forth in this Solar Garden LLC Agreement, and the consummation of the transactions contemplated by this Solar Garden LLC Agreement do not violate or conflict with any provision of any federal, state, municipal or local laws, ordinances, rules, regulations, requirements, or any order, judgment, decree, determination, or award of any court binding on any entity affiliated with the Solar Garden LLC Manager, or their assets, including the Project LLC and the Project; nor do they conflict with, result in a breach of, constitute a default under, result in the acceleration of, or create in any party the right to accelerate, terminate, modify, or cancel, or require any notice (which notice has not been furnished) under any agreement, contract, lease, license, instrument, or other arrangement to which any entity affiliated with the Solar Garden LLC Manager is a party or by which it is bound or to which any of its assets is subject;

(i) the Solar Garden LLC's Fiscal Year is and shall be the calendar year, unless the majority of the Solar Garden Members are required to use another year by the Code as its taxable year;

(j) the facts upon which the Financial Projections are based are true to the Solar Garden LLC Manager's Knowledge, after due inquiry, and the Financial Projections were prepared in good faith based upon assumptions believed to be reasonable by the Solar Garden LLC Manager and are consistent with the output guaranty from the EPC Contractor included in the Warranties;

(k) no litigation, action, investigation, event, or proceeding is pending or, to the best of the Solar Garden LLC Manager's Knowledge is threatened, that, if adversely resolved, would: (i) have a Material Adverse Effect on the Solar Garden LLC, the Project LLC or the Project (or, to the Solar Garden LLC Manager's Knowledge, any adjacent or other property that would have a Material Adverse Effect on the Solar Garden LLC); (ii) have a Material Adverse Effect on the ability of the Solar Garden LLC Manager or any of its Affiliates to perform their respective obligations under this Solar Garden LLC Agreement; (iii) have a Material Adverse Effect on the financial condition of the Solar Garden LLC Manager; or (iv) constitute or result, if true, in a material breach of any representation, warranty, covenant, or agreement set forth in this Solar Garden LLC Agreement;

(l) amounts, if any, paid to the Solar Garden LLC Manager and/or its Affiliates by the Solar Garden LLC for services in accordance with any service agreement are reasonable in relation to the value of services provided to the Solar Garden LLC pursuant to the applicable agreements;

(m) it will cause the Solar Garden LLC to use diligent efforts to cause the construction and/or installation of the Project and thereafter operation thereof as required by the Code in order to qualify for and maintain the Cash Grants and Commonwealth Solar Rebates, as applicable, and other tax benefits anticipated in connection therewith;

(n) the Solar Garden LLC has not made any elections under the Code without the Consent of the Solar Garden Members that would affect the amount, timing, availability, or allocation of the Cash Grants or the Commonwealth Solar Rebates;

(o) it has not entered into or formed a joint venture with and is not acting as an agent of any Person with respect to ownership and operation of the Project, the Project LLC or the Solar Garden LLC;

(p) there are no members in the Solar Garden LLC for federal income tax purposes other than the Solar Garden Members;

(r) each of the Transaction Documents to which the Solar Garden LLC or the Solar Garden LLC Manager is a party is in full force and effect, and, to the Solar Garden LLC Manager's Knowledge, all representations and warranties of the parties to the Transaction Documents are true and correct and no default has occurred or is continuing under any Transaction Document;

(s) the Solar Garden LLC does not own or lease any real or personal property or other assets other than as contemplated by the Transaction Documents. The Solar Garden LLC is not a party to any material contracts or agreements other than as contemplated by the Transaction Documents. The Solar Garden LLC has no debts or other liabilities other than as contemplated by the Transaction Documents; and

(t) the Solar Garden LLC has no employees and has not maintained, sponsored, administered or participated in any employee benefit plan or arrangement;

(u) neither the Solar Garden LLC, the Solar Garden LLC Manager nor any of their respective Affiliates is subject to regulation under the Federal Power Act, as amended (“FPA”), except as provided in 18 C.F.R. § 292.601 and except to the extent it or the Projects are subject to filing or certification requirements applicable to obtaining or maintaining status as a “qualifying small power production facility” within the meaning of Section 3(17) (A) of the FPA and 18 C.F.R. §§ 292.203 and 292.204. All of the Solar Garden LLC, the Solar Garden LLC Manager and each of their respective Affiliates is exempt from state laws or regulations respecting (i) the rates of electric utilities, and (ii) the financial and organizational regulation of electric utilities; and

(v) neither the Solar Garden LLC, the Solar Garden LLC Manager nor any of their respective Affiliates is an entity described in Section 1603(g) of division B of the American Recovery and Reinvestment Act of 2009 or a foreign person within the meaning of Section 168(h) of the Code.

The Solar Garden LLC Manager shall be solely responsible for the representations, warranties and covenants hereunder, and shall not assert as a defense in any action by the Solar Garden LLC or the Solar Garden Members the fact that the Solar Garden LLC Manager may have relied on other parties in connection with matters addressed therein; provided, however, that this obligation to the Solar Garden LLC and the Solar Garden Members shall not prevent the Solar Garden LLC Manager from asserting such reliance in any action brought by the Solar Garden LLC Manager against such parties on which the Solar Garden LLC Manager relied.

Section 5.10 Duties and Obligations of the Solar Garden LLC Manager. The Solar Garden LLC Manager shall have the following duties and obligations with respect to the Project LLC and the Solar Garden LLC:

(a) it shall cause the Solar Garden LLC to do all things necessary to maintain its status as a limited liability company in good standing and had, has, and shall continue to have full power and authority to cause the acquisition of the Project LLC Interest and to cause the Project LLC to develop, construct, operate, and maintain the Project in accordance with the terms of this Solar Garden LLC Agreement and the Project LLC Agreement and to enable the Solar Garden LLC to engage in its business; it shall exercise good faith in all activities relating to the conduct of the business of the Solar Garden LLC, including the acquisition of the Project LLC Interest, and it shall take no action with respect to the business and property of the Solar Garden LLC which is not reasonably related to the achievement of the purpose of the Solar Garden LLC;

(b) it shall cause to be prepared and submitted to the IRS (or any other Governmental Authority designated for such purposes), on a timely basis, the election and any and all annual reports, information returns and other certifications and information required (i) to ensure that the Solar Garden LLC (and its members) qualifies for the Cash Grants and Commonwealth Solar Rebates and (ii) to avoid any Recapture Event or the imposition of penalties or interest on the Solar Garden LLC (or any of its Members) for failure to comply with the requirements of the Code or any other Applicable Laws relating to the Cash Grants and Commonwealth Solar Rebates;

(c) it will execute on behalf of the Solar Garden LLC all documents necessary to elect, pursuant to Sections 732, 734, 743 and 754 of the Code, to adjust the basis of the Solar Garden LLC's property upon the request of a Solar Garden Member, if, in the sole opinion of such a Solar Garden Member, such election would be advantageous to such Solar Garden Member;

(d) it shall provide the Solar Garden Members with notice of any written or oral notice of any (i) default or failure of compliance with respect to any financial, contractual or governmental obligation of the Solar Garden Members, the Solar Garden LLC or the Solar Garden LLC Manager, (ii) IRS proceeding regarding the Project, the Solar Garden LLC or the Solar Garden LLC, (iii) material litigation, criminal action or administrative proceeding against the Solar Garden Members, the Solar Garden LLC Manager, the Solar Garden LLC or any Affiliate of any of them, or (iv) communication from any Person or Governmental Authority which is not in the ordinary course of business;

(e) it shall keep the Solar Garden LLC Manager (if applicable) and Solar Garden LLC in good standing in accordance with the requirements of the State and each other jurisdiction, as applicable;

(f) it shall furnish to the Solar Garden Members such other approvals, opinions, certificates, documents or agreements as Solar Garden Members may reasonably request, in form and substance reasonably acceptable to Solar Garden Members;

(g) it shall provide the Solar Garden LLC with such information and sign such documents as are necessary for the Solar Garden LLC and the Solar Garden Members to make timely, accurate and complete submissions of (i) federal and state income Tax Returns, (ii) required reports to Governmental Authority, and (iii) any other reports required to be delivered by the Solar Garden Members to their members or partners, if applicable;

(h) it agrees to provide notice to the Solar Garden Members of any change in the financial condition of the Solar Garden LLC Manager that it expects, or should reasonably expect, will have a Material Adverse Effect on the ability of the Solar Garden LLC Manager to satisfy its obligations under the Transaction Documents;

(i) it shall comply and cause the Solar Garden LLC to comply with the material provisions of all Applicable Laws and all Transaction Documents;

(j) while conducting the business of the Solar Garden LLC, it shall not act in any manner which it knows or should have known after due inquiry will (i) cause the termination of

the Solar Garden LLC for federal income tax purposes without the Consent of the Solar Garden Members; (ii) cause the Solar Garden LLC to be treated for federal income tax purposes as an association taxable as a corporation, (iii) cause the Solar Garden LLC to fail to qualify as a limited liability company under the Act, or (iv) cause the Members to be liable for Solar Garden LLC obligations;

(k) it shall cause to be met all requirements applicable to the Solar Garden LLC which are necessary to obtain, achieve and maintain issuance of all necessary permits and licenses including all governmental approvals required to permit operation of the Projects;

(l) it shall cause the Solar Garden LLC to cause the Project LLC to operate and manage the Project in accordance with Prudent Utility Practices and in the best interests of the Solar Garden LLC;

(m) it has not and will not permit the Solar Garden LLC to accept any federal or non-federal governmental grants or funds other than the grants or funds which have previously been disclosed to the Solar Garden Members without the Consent of the Solar Garden Members;

(n) it shall cause the Solar Garden LLC to cause the Project LLC to maintain insurance coverages in amounts and types in accordance with the standards set forth in the Project LLC Agreement; and

(o) it shall not, through willfulness or gross negligence, cause the Project to fail to qualify for Cash Grants, the Commonwealth Solar Rebates or otherwise cause a Recapture Event.

Section 5.11 Delegation of Authority. The Solar Garden LLC Manager may delegate all or any of its powers, rights and obligations hereunder, and may appoint, employ, contract or otherwise deal with any Person for the transaction of the business of the Solar Garden LLC, which Person may, under supervision of the Solar Garden LLC Manager, perform acts or services for the Solar Garden LLC as the Solar Garden LLC Manager may approve.

## **ARTICLE VI RIGHTS AND LIABILITIES OF SOLAR GARDEN MEMBERS**

### Section 6.01 Liability of Solar Garden Members.

(a) No Solar Garden Member shall be liable for any debts, liabilities, contracts, or obligations of the Solar Garden LLC. A Solar Garden Member shall be liable only to make payments of it, his or her Capital Contribution as and when due hereunder. After a Solar Garden Member's Capital Contribution is fully paid, the Solar Garden Member shall not be required to make any further capital contributions or lend any funds to the Solar Garden LLC, except for the obligation to make additional Capital Contributions to fund Cost Overruns and/or Operating Deficits and as otherwise required by law or this Solar Garden LLC Agreement.

Section 6.02 No Right to Manage. No Solar Garden Member shall take part in the management, control, conduct or operation of the Solar Garden LLC, or have any right, power or authority to act for or bind the Solar Garden LLC; *provided, however,* that

notwithstanding this provision, the Solar Garden LLC Manager or its Affiliates may be Solar Garden Members of the Solar Garden LLC.

Section 6.03     Death or Disability of Solar Garden Member. The Solar Garden LLC shall not be dissolved by the death, insanity, adjudication of incompetency, Bankruptcy, insolvency or withdrawal of any Solar Garden Member, by the assignment by any Solar Garden Member of his or her Units, or by the admission of a Substituted Solar Garden Member.

## **ARTICLE VII TRANSFERABILITY OF SOLAR GARDEN MEMBER INTERESTS**

### Section 7.01     Transfers.

(a)     A Solar Garden Member may not pledge, encumber, assign or otherwise Transfer all or any part of its, his or her Interest without the prior written consent of the Solar Garden LLC Manager, the giving or withholding of which shall not be unreasonably withheld.

(b)     An assignee of a Solar Garden Member who does not become a Substituted Solar Garden Member in accordance with Section 7.02 shall have the right to receive the same share of profits, losses, and distributions of the Solar Garden LLC to which the assigning Solar Garden Member would have been entitled if no such assignment had been made by such Solar Garden Member.

(c)     Any Solar Garden Member who shall assign all of its, his or her Interest shall cease to be a Solar Garden Member and shall no longer have any rights or privileges of a Solar Garden Member except that, unless and until the assignee of such Solar Garden Member is admitted to the Solar Garden LLC as a Substituted Solar Garden Member in accordance with Section 7.02, said assigning Solar Garden Member shall retain the statutory rights and be subject to the statutory obligations of an assignor Solar Garden Member under the Act.

(d)     In the event of any Transfer of a Solar Garden Member Interest, there shall be filed with the Solar Garden LLC (and the Solar Garden LLC need not recognize such Transfer until such filing) by the transferor of a duly executed and acknowledged counterpart of the instrument making such Transfer, including the written acceptance by the transferee of all the terms and provisions of this Solar Garden LLC Agreement.

(e)     An assignee of a Solar Garden Member Interest who does not become a Substitute Solar Garden Member as provided in Section 7.02 and who desires to make a further assignment or other Transfer of such Solar Garden Member Interest shall be subject to all the provisions of this Article VII to the same extent and in the same manner as any Solar Garden Member desiring to make an assignment or other Transfer of a Solar Garden Member Interest.

(f)     The Solar Garden LLC Manager may, in addition to any other requirement it may impose, require as a condition of a Transfer that the transferor assume or reimburse all costs incurred by the Solar Garden LLC, the Solar Garden LLC Manager or its Affiliates in connection therewith, including, without limitation the following: (i) any advice or services from counsel; (ii) services provided and costs incurred by the Solar Garden LLC Manager or its Affiliates, including the internal cost of time spent by employees thereof; and (iii) if the Solar

Garden LLC makes, or has made, an election under Section 754 of the Code, any incremental accounting fees resulting from compliance with Section 754 of the Code in connection with such Transfer. In addition, no Transfer of all, or any portion of, a Solar Garden Member Interest shall relieve the transferor of the obligation to make any of the unpaid Capital Contributions with regard to the portion of the Solar Garden Member Interest which is Transferred unless the Solar Garden LLC Manager specifically agrees to release such transferor from such obligation.

(g) If a Solar Garden Member sells or no longer leases, as applicable, the property in the Town of Harvard or nearby town within the same utility load zone which enabled such Solar Garden Member to qualify for participation in the Harvard Solar Program (a “Property Disposition”), the Solar Garden LLC Manager shall, subject to the other provisions set forth in this Article VII, use its best efforts to assist in the Transfer of the Interest of such Solar Garden Member to the new owner or lessee (the “New Owner”) of the property subject to such Property Disposition to the extent such New Owner wishes to acquire the Interest and assume the responsibilities therefor. If the New Owner does not wish to acquire such Interest, then the Solar Garden LLC Manager shall use its best efforts to assist in the Transfer of such Interest to a Person on the Solar Garden Member Waiting List.

Section 7.02 Substituted Solar Garden Members. No Solar Garden Member shall have the right to substitute an assignee as a Solar Garden Member in its place without the consent of the Solar Garden LLC Manager, which consent, prior to payment in full of the Solar Garden Member’s Capital Contribution to the Solar Garden LLC, shall be within the Solar Garden LLC Manager’s sole discretion; and after such payment, the Solar Garden LLC Manager’s consent shall not be unreasonably withheld. The consent of the Solar Garden LLC Manager to an assignment of a Solar Garden Member’s Interest under Section 7.01 shall not, in and of itself, constitute consent under this Section 7.02. Each Substituted Solar Garden Member shall execute such instruments as shall be required by the Solar Garden LLC Manager to signify its agreement to be bound by all the provisions of this Solar Garden LLC Agreement and shall pay the Solar Garden LLC’s reasonable legal fees and filing costs in connection with its substitution as a Solar Garden Member.

Section 7.03 Restrictions.

(a) No Transfer may be made if the Solar Garden Member Interest sought to be transferred when added to the total of all other Solar Garden Member Interests transferred within the period of twelve (12) consecutive months prior to the proposed date of Transfer could, in the opinion of the Solar Garden LLC Manager and its tax counsel, result in the termination of the Solar Garden LLC under Section 708 of the Code or any material adverse consequences under the Code to the Solar Garden LLC or any of the other Members.

(b) The Solar Garden LLC Manager may withhold its consent, in its absolute discretion, to a Transfer made: (i) to a Person who is not a resident of or business operating in the Town of Harvard, (ii) in violation of any law or regulation, or (iii) which would require the Solar Garden LLC to register the Solar Garden LLC or the Units under applicable federal and state securities laws.

(c) No Transfer may be made to an entity exempt from federal income tax under 501 of the Code, to any Person defined in Section 168(h)(2) of the Code, to any Individual Retirement Account as defined in Section 408(a) of the Code, to any Keogh Plan, to any nonresident alien, or to any foreign entity.

(d) No Transfer may be made if in the opinion of Counsel for the Solar Garden LLC, such Transfer would cause the Solar Garden LLC to become a publicly-traded partnership for federal income tax purposes.

(e) No Transfer may be made if the Solar Garden LLC Manager determines that the nature of the assignee or the nature of the funds used by such assignee to acquire such Solar Garden Member Interest would cause the Solar Garden LLC's assets, in whole or in part, to be treated as "plan assets" under the Employee Retirement Income Security Act of 1974, as amended.

(f) The Solar Garden LLC Manager may withhold its consent, in its absolute discretion, to any Transfer if it would result in a Solar Garden Member that previously owned 50% or less of the outstanding Units owning more than 50% of the outstanding Units.

(g) The Solar Garden LLC Manager may, in addition to any other requirement it may impose, require as a condition of Transfer that the transferor (i) assume all costs incurred by the Solar Garden LLC in connection therewith, including payment for the time (including a reasonable allocation of overhead) of employees of the Solar Garden LLC Manager and its Affiliates spent dealing with the Transfer and (ii) furnish it with a satisfactory opinion of counsel that such Transfer complies with applicable federal and state securities laws.

(h) Any Transfer in contravention of any of the provisions of this Section 7.03 shall be void and ineffectual and shall not bind or be recognized by the Solar Garden LLC.

## **ARTICLE VIII CHANGES IN SOLAR GARDEN LLC MANAGER; REMOVAL**

### Section 8.01     Solar Garden LLC Manager's Withdrawal.

(a) A Solar Garden LLC Manager may withdraw from the Solar Garden LLC only with the Consent of the Members, and only after being given written approval by the necessary parties as provided in Section 8.02 of the Solar Garden LLC Manager(s) to be substituted for it as Solar Garden LLC Manager.

(b) In the event that an Solar Garden LLC Manager withdraws from the Solar Garden LLC, it shall be and shall remain liable for all obligations and liabilities incurred by it as Solar Garden LLC Manager before such withdrawal shall have become effective, but shall be free of any obligation or liability incurred on account of the activities of the Solar Garden LLC from and after the time such withdrawal shall have become effective.

Section 8.02 Admission of a Successor or Additional Solar Garden LLC Manager.

A Person shall be admitted as a Solar Garden LLC Manager of the Solar Garden LLC only if the following terms and conditions are satisfied:

(a) the admission of such Person shall have been consented to by the Solar Garden LLC Manager or its successors and shall have received the Consent of the Solar Garden Members;

(b) the successor or additional Person shall have accepted and agreed to be bound by (i) all the terms and provisions of this Solar Garden LLC Agreement, by executing a counterpart thereof, and (ii) all the terms and provisions of the Transaction Documents, to the extent applicable, by executing a counterpart thereof, and (iii) all the terms and provisions of such other documents or instruments as may be required or appropriate in order to effect the admission of such Person as an Solar Garden LLC Manager, and an appropriate document evidencing the admission of such Person as an Solar Garden LLC Manager shall have been filed, if required;

(c) if the successor or additional Person is a limited liability company, corporation, partnership or other legal entity, it shall have provided the Solar Garden LLC with evidence satisfactory to Counsel for the Solar Garden LLC of its authority to become an Solar Garden LLC Manager, to do business in the State and to be bound by the terms and provisions of this Solar Garden LLC Agreement; and

(d) Counsel for the Solar Garden LLC shall have rendered an opinion that the admission of the successor or additional Person is in conformity with the Act and that none of the actions taken in connection with the admission of such Person will cause the termination or dissolution of the Solar Garden LLC or will cause it to be treated for federal income tax purposes as an association taxable as a corporation.

Section 8.03 Effect of Bankruptcy, Death, Withdrawal, Dissolution or Incompetence of an Solar Garden LLC Manager.

(a) Upon the Bankruptcy, withdrawal or dissolution of a Solar Garden LLC Manager that is an entity or the death, or adjudication of incompetence of a Solar Garden LLC Manager that is a natural person, such Solar Garden LLC Manager shall immediately cease to be a Solar Garden LLC Manager. If such Bankrupt, dissolved, incompetent or deceased Solar Garden LLC Manager is the sole remaining Solar Garden LLC Manager, such Solar Garden LLC Manager shall cease to be an Solar Garden LLC Manager only upon the expiration of ninety (90) Days after notice to the Members of the Bankruptcy, death, dissolution or declaration of incompetence of such Solar Garden LLC Manager.

(b) If, at the time of the withdrawal, Bankruptcy, death, dissolution or adjudication of incompetence of an Solar Garden LLC Manager, the Bankrupt, deceased, dissolved or incompetent Solar Garden LLC Manager was not the sole Solar Garden LLC Manager of the Solar Garden LLC, the remaining Solar Garden LLC Manager shall immediately (i) give notice to the Members of such Bankruptcy, death, dissolution or adjudication of

incompetence, and (ii) make such amendments to this Solar Garden LLC Agreement and execute and file such amendments or documents or other instruments as are necessary to reflect that the Bankrupt, deceased, dissolved or incompetent Solar Garden LLC Manager has ceased to be an Solar Garden LLC Manager. Such action or actions by the remaining Solar Garden LLC Manager shall, in the event that permission of a bankruptcy court is necessary, be deemed to have been taken subject to the provisions of Section 8.03(c) below. The remaining Solar Garden LLC Manager is hereby granted an irrevocable power of attorney, coupled with an interest, to execute any or all documents on behalf of the Members and the Solar Garden LLC and to file such documents as may be required to effectuate the provisions of this Section 8.03.

(c) The Solar Garden LLC Manager, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agrees that in the event the Solar Garden LLC Manager should make application for or seek protection or relief under the Bankruptcy Code, or in the event that any involuntary petition is filed against the Solar Garden LLC Manager, then, in such event, any other Member shall thereupon be entitled to immediate relief from any automatic stay imposed by Section 362 of the Bankruptcy Code, or otherwise, on or against the exercise of the rights and remedies available to such Member pursuant to this Solar Garden LLC Agreement, or otherwise. The foregoing shall in no way preclude, restrict or prevent the Solar Garden LLC Manager from filing for protection under the Bankruptcy Code.

(d) The Members acknowledge and agree that this Solar Garden LLC Agreement is a contract under which the Members are excused from accepting performance from the Solar Garden LLC Manager, its assignee or trustee, in the event that the Solar Garden LLC Manager makes application for or seeks protection under any of the Sections or Chapters of the Bankruptcy Code, or in the event that an involuntary petition is filed against such Solar Garden LLC Manager. The effect of this Section 8.03(d) shall be that this Solar Garden LLC Agreement is hereby deemed to be subject to the exceptions to assumption and assignment of contracts set forth in Sections 365(c)(1) and 365(e)(2)(A) of the Bankruptcy Code and that the Members, by their refusal to consent to an assumption or assignment of this Solar Garden LLC Agreement by the Solar Garden LLC Manager after the filing of a petition in bankruptcy by or against such Solar Garden LLC Manager, shall be able to prevent such assumption or assignment.

(e) In the event that the Solar Garden LLC Manager makes application for or seeks relief or protection under any of the Sections or Chapters of the Bankruptcy Code, or in the event that any involuntary petition is filed against said Solar Garden LLC Manager, then, in such event, any Member may apply or move to the bankruptcy court in which such petition is filed for a change of venue to the bankruptcy court where the Solar Garden LLC has its principal place of business, and the Solar Garden LLC Manager hereby agrees not to oppose or object to such application or motion in any way.

#### Section 8.04      Removal of the Solar Garden LLC Manager.

(a) With the Consent of the Solar Garden Members holding at least two-thirds of the Units, the Solar Garden Members shall have the right to remove the Solar Garden LLC Manager:

(i) for any willful misconduct, gross negligence, malfeasance, fraud, act outside the scope of its authority, breach of its fiduciary duty, or any failure to exercise reasonable care with respect to any matter in the discharge of its duties and obligations as Solar Garden LLC Manager (provided the same has, or would reasonably be expected to have, a Material Adverse Effect on the Solar Garden LLC, the Members, the Project LLC or the Project); or

(ii) upon the occurrence of any of the following:

(A) the Solar Garden LLC or any entity affiliated with the Solar Garden LLC Manager shall have violated or allowed to be violated, either by action or inaction, any provisions of any of the Transaction Documents, or any provisions of any state or federal regulations, or other requirements applicable to the Project, any of which has Material Adverse Effect on the Solar Garden LLC, the Members, the Project LLC or the Project;

(B) the Solar Garden LLC or any entity affiliated with an Solar Garden LLC Manager shall have failed to pay the Members any amounts due hereunder, violated or allowed to be violated either by action or inaction, Sections 5.03, 5.10 or 11.03 of this Solar Garden LLC Agreement; or violated or allowed to be violated any other provision of this Solar Garden LLC Agreement or any provision of Applicable Law, either by action or inaction, provided the same has a Material Adverse Effect on the Solar Garden LLC, the Members, the Project LLC or the Project;

(C) the Solar Garden LLC or the Solar Garden LLC Manager shall have conducted its own affairs or the affairs of the Solar Garden LLC in such manner as would:

(1) cause the Solar Garden LLC to fail to qualify as a limited liability company under the Act;

(2) cause the termination of the Solar Garden LLC for federal income tax purposes; or

(3) cause the Solar Garden LLC to be treated for federal income tax purposes other than as an association, taxable as a corporation;

(D) an event of Bankruptcy shall have occurred with respect to the Solar Garden LLC or the Solar Garden LLC Manager; and

(E) violation by the Solar Garden LLC of any provision of the Transaction Documents, provided the same has not been cured within any applicable cure period, and has a Material Adverse Effect on the Solar Garden LLC, the Members, the Project LLC or the Project.

(b) Procedure for Removal. The Solar Garden Members shall give notice to the Managing Member of their determination that there is cause under Section 8.04(a) to remove the Managing Member. The Solar Garden LLC Manager shall have thirty (30) Days after receipt of such notice to cure any default, breach or violation which is the cause for such removal, or

such longer period as shall be reasonably necessary to cure such default so long as the Solar Garden LLC Manager shall be diligently pursuing such cure, in which event it shall remain as Solar Garden LLC Manager. If, at the end of thirty (30) Days (or such longer period as shall reasonably be necessary), the Solar Garden LLC Manager has not cured any default, breach or violation which is the cause for such removal, at the election of the Solar Garden Members holding at least two-thirds of the Units, and upon notice of removal to the Solar Garden LLC Manager, the Solar Garden LLC Manager shall cease to be Solar Garden LLC Manager and the powers and authorities conferred on it as Solar Garden LLC Manager under this Solar Garden LLC Agreement shall cease; if the Solar Garden Members so elect, a successor Solar Garden LLC Manager shall be selected in accordance with Section 8.02; and the rights, duties and obligations of such Solar Garden LLC Manager in the Solar Garden LLC as Solar Garden LLC Manager shall be transferred to a successor Solar Garden LLC Manager in accordance with Section 8.02.

(c) In the event the Solar Garden LLC Manager is removed as aforesaid, it shall be and shall remain liable for all obligations and liabilities incurred by it as Solar Garden LLC Manager before such removal became effective, but shall be free of any obligation or liability incurred on account of the activities of the Solar Garden LLC from and after the time such removal shall become effective.

## **ARTICLE IX MEETINGS OF SOLAR GARDEN MEMBERS AND VOTING**

### Section 9.01      Voting by Solar Garden Members.

(a) Whenever any vote or action is required to be taken by the Solar Garden Members under this Solar Garden LLC Agreement, such vote or action shall be taken (i) at a meeting of the Solar Garden Members entitled to vote or act thereon called and held in accordance with this Article, or (ii) by the Solar Garden Members entitled to vote or act thereon in accordance with the procedures set forth in Section 9.06 hereof.

(b) The Solar Garden Members shall vote in proportion to each Solar Garden Member's interest in the Solar Garden LLC, as determined by the number of Units held. Each full Unit shall be entitled to one vote and any fractional Units shall be counted as having a fractional vote equal to fractional share represented by the fractional Unit.

(c) Except as otherwise provided by this Solar Garden LLC Agreement or applicable law, all action taken by the Solar Garden Members shall be authorized by the affirmative vote of the Solar Garden Members entitled to vote holding at least a majority of the Units.

### Section 9.02      Meetings of Solar Garden Members.

(a) An annual meeting of the Solar Garden Members may be held in such month of each year, as determined by the Solar Garden LLC Manager, if called by the Solar Garden LLC Manager for the purpose of reviewing the business of the Solar Garden LLC with the Solar Garden Members and for the transaction of such other business as may come before the

meeting. If no annual meetings are called by the Solar Garden LLC Manager, the Solar Garden LLC need not hold annual meetings. Special meetings of the Solar Garden Members, for any purpose or purposes, may be called from time to time by the Solar Garden LLC Manager or by Solar Garden Members holding at least a majority of the Units.

(b) When assembled at an annual meeting, the Solar Garden Members may vote or act upon any matter with respect to which they are entitled to vote or act under the terms of this Solar Garden LLC Agreement or under the Act to the extent consistent with this Solar Garden LLC Agreement. When assembled at a special meeting, the Solar Garden Members may vote or act upon any matter described in the immediately preceding sentence which was set forth in the notice calling the meeting or notice of which was or is thereafter waived in accordance with this Solar Garden LLC Agreement.

(c) Solar Garden Members may participate in any meeting by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person at the meeting.

Section 9.03 Place of Meeting. The Solar Garden LLC Manager may designate any place within the Town of Harvard as the place of the meeting for any annual or special meeting of the Solar Garden Members.

Section 9.04 Notice of Meeting.

(a) The Solar Garden LLC Manager, or the Solar Garden Members calling a meeting, shall cause a written or electronic notice of such meeting to be given to each Solar Garden Member of record entitled to vote at such meeting not fewer than ten (10) nor more than sixty (60) Days before the date of the meeting. Such notice shall state (i) the place, date, and hour of the meeting, (ii) that it is being issued by or at the direction of the Person calling the meeting, and (iii) in the case of a special meeting, the purposes for which the meeting is called.

(b) Notwithstanding paragraph (a) hereof, notice of meeting need not be given to any Solar Garden Member who submits a signed waiver of notice, in person or by proxy. The attendance of a Solar Garden Member at a meeting, in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, shall constitute a waiver of notice of such meeting by such Solar Garden Member.

Section 9.05 Proxies. At all meetings of Solar Garden Members, a Solar Garden Member may vote by proxy executed in writing by the Solar Garden Member or by his or her duly authorized attorney-in-fact. In order to be effective, such proxy shall (i) be signed in the exact name of the Solar Garden Member on record with the Solar Garden LLC, and (ii) be filed with the Solar Garden LLC Manager before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 9.06 Action by Solar Garden Members Without a Meeting.

(a) Any action required or permitted to be taken by vote at a meeting of the Solar Garden Members may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing or electronic setting forth the action so taken shall be signed by the Solar Garden Members holding the number of Units representing not fewer than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all of the Solar Garden Members entitled to vote therein were present and voted and shall be delivered to the principal office of the Solar Garden LLC or to the Solar Garden LLC Manager. Delivery of a consent may be made to the principal office of the Solar Garden LLC or to the Solar Garden LLC Manager by any means permitted under Section 12.01 hereof and shall be deemed to be delivered upon receipt.

(b) Every written consent shall bear the date and signature (manual or electronic) of each Solar Garden Member who signs the consent, and no such consent shall be effective to take the action referred to therein unless within 60 Days of the earliest date a consent is delivered in the manner described in paragraph (a) of this Section 9.06, written consents signed by holders of a sufficient number of Units to take the action are delivered to the Solar Garden LLC.

(c) Prompt notice of the taking of the action without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

## **ARTICLE X DISSOLUTION**

Section 10.01 Dissolution. The Solar Garden LLC shall be dissolved upon:

(a) the sale or other disposition of all or substantially all of the assets of the Solar Garden LLC;

(b) the determination by the Solar Garden LLC Manager to dissolve, approved by the vote or Consent of the Solar Garden Members holding at least two-thirds of the Units to dissolve the Solar Garden LLC; or

(c) any other event causing the dissolution of the Solar Garden LLC under the laws of the State.

Section 10.02 Winding Up and Distribution.

(a) Upon the dissolution of the Solar Garden LLC pursuant to Section 10.01, the Solar Garden LLC business shall be wound up and its assets liquidated as provided in this Section 10.02 and the net proceeds of such liquidation shall be applied as follows:

(i) first, to the payment of creditors of the Solar Garden LLC, including the Solar Garden LLC Manager and any Members who are creditors, to the extent permitted by law; and

- and
- (ii) then, to pay the expenses of winding up the Solar Garden LLC;
  - (iii) finally, to each Member in accordance with their Capital Account balances.

(b) The Liquidator shall file all certificates and notices of the dissolution of the Solar Garden LLC required by law. The Liquidator shall proceed without any unnecessary delay to sell and otherwise liquidate the Solar Garden LLC's property and assets; provided, however, that if the Liquidator shall determine that an immediate sale of part or all of the Solar Garden LLC property would cause undue loss to the Members, then in order to avoid such loss, the Liquidator may, except to the extent provided by the Act, defer the liquidation as may be necessary to satisfy the debts and liabilities of the Solar Garden LLC to Persons other than the Members. Upon the complete liquidation and distribution of the Solar Garden LLC assets, the Members shall cease to be Members of the Solar Garden LLC, and the Liquidator shall execute, acknowledge and cause to be filed all certificates and notices required by the law to terminate the Solar Garden LLC.

Section 10.03 Final Statements. Upon the dissolution of the Solar Garden LLC pursuant to Section 10.01, a statement setting forth the assets and liabilities of the Solar Garden LLC upon its dissolution shall be prepared and furnished to all Members. As soon as practicable following the complete liquidation and distribution of the Solar Garden LLC property and assets, a statement showing the manner in which the Solar Garden LLC assets were liquidated and distributed shall be prepared and furnished to all Members.

## **ARTICLE XI BOOKS AND ACCOUNTS**

Section 11.01 Books. The Solar Garden LLC Manager shall keep or cause to be kept books of account in which shall be entered fully and accurately in all material respects the transactions of the Solar Garden LLC. All books and records and this Solar Garden LLC Agreement and all amendments thereto shall at all times be maintained at the principal office of the Solar Garden LLC and shall be open to the inspection and examination of each Member or his representatives during ordinary business hours upon reasonable notice. The Solar Garden LLC Manager shall furnish all Members a report of the affairs of the Solar Garden LLC at least annually and shall timely furnish such additional information as the Members may need to prepare their income tax returns.

Section 11.02 Accounting Method. The accounting method for both book and tax purposes shall be the accrual method, unless another permissible method is elected by the Solar Garden LLC Manager.

Section 11.03 Reports.

(a) The Solar Garden LLC Manager shall deliver to each Solar Garden Member quarterly updates, within forty-five (45) Days after the end of each of the first three quarters of each Fiscal Year on the progress and activities of the Solar Garden LLC and the Project LLC,

which shall include unaudited financial statements of the Solar Garden LLC and the Solar Garden LLC and a construction status report for the Project if under construction at the time.

(b) The Solar Garden LLC Manager shall deliver to all Persons who were Members at any time during a Fiscal Year the following: (i) within seventy-five (75) Days after the end of each Fiscal Year, all necessary tax information including a Form 1099 or Schedule K-1, as applicable; and (ii) within one hundred twenty (120) Days after the end of each Fiscal Year, audited financial statements of the Solar Garden LLC and the Project LLC for the prior Fiscal Year.

## **ARTICLE XII GENERAL**

Section 12.01 Notices. Any notices which may or are required to be given hereunder by any party to another shall be in writing and sent by certified or registered United States mail, postage prepaid, by recognized overnight courier, by facsimile or other electronic transmission or by hand delivery to the addresses set forth for the Solar Garden LLC Manager and each Member on the Solar Garden LLC Register. Notices shall be deemed to have been given on the fifth business Day after being so mailed, the next Business Day after delivery to such overnight courier, the same Business Day when sent by facsimile transmission or other electronic transmission or upon receipt when delivered by hand. Any Member may change its address by giving written notice to the Solar Garden LLC Manager in a manner conforming to the notice provisions hereof.

Section 12.02 Captions. The Section titles and captions contained in this Solar Garden LLC Agreement are for convenience only and shall not be deemed part of the context of this Solar Garden LLC Agreement.

Section 12.03 Pronouns and Plurals. Whenever the context may require, any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

Section 12.04 Entire Agreement. This Solar Garden LLC Agreement and the documents referred to herein contain the entire understanding among the parties hereto, and supersedes any prior understandings or written or oral agreement between or among any of them, respecting the within subject matter. There are no representations, agreements, arrangements or understandings, oral or written, between or among any of the parties relating to the subject matter of this Solar Garden LLC Agreement which are not fully expressed herein.

Section 12.05 No Waiver. No delay on the part of any Member or the Solar Garden LLC Manager in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Member or Solar Garden LLC Manager of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

Section 12.06 Further Actions. The Members and the Solar Garden LLC Manager shall execute and deliver all documents, provide all information and take or forebear

from all such action as may be necessary or appropriate to achieve the purposes of the Solar Garden LLC.

Section 12.07 Binding Effect. This Solar Garden LLC Agreement shall be binding upon and inure to the benefit of the Members, the Solar Garden LLC Manager and their permitted successors and assigns.

Section 12.08 Creditors. None of the provisions of this Solar Garden LLC Agreement shall be for the benefit of, or enforceable by, any creditor of the Solar Garden LLC or any creditor of a Member or the Solar Garden LLC Manager.

Section 12.09 Severability. The provisions of this Solar Garden LLC Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Solar Garden LLC Agreement, or the application thereof to any person or entity or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Solar Garden LLC Agreement and the application of such provision to other persons, entities or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 12.10 Governing Law. This Solar Garden LLC Agreement shall be governed by the internal laws of the State without reference to the choice of laws provisions therein.

Section 12.11 Amendment.

(a) This Solar Garden LLC Agreement may be amended or modified only by the affirmative written consent of the Solar Garden LLC Manager and of the Consent of the Solar Garden Members holding a majority of the Units; *provided, however*, that without the written consent of each Member adversely affected thereby, no amendment of this Solar Garden LLC Agreement shall be made that (i) increases the obligations of any Member to make contributions other than as contemplated in this Solar Garden LLC Agreement, (ii) alters the allocation for tax purposes of any items of income, gain, loss, or deduction, or (iii) alters the manner of computing the Distributions of any Member.

(b) Notwithstanding Section 12.11(a) hereof, the Solar Garden LLC Manager shall have the power, without the Consent of the Solar Garden Members, to amend this Solar Garden LLC Agreement as may be required to facilitate or implement any of the following purposes:

(i) to add to the obligations of the Solar Garden LLC Manager or surrender any right or power granted to the Solar Garden LLC Manager or any Affiliates for the benefit of the Solar Garden Members;

(ii) to reflect the admission, substitution, termination, or withdrawal of Members in accordance with this Solar Garden LLC Agreement;

(iii) to reflect a change that is of an inconsequential nature and does not adversely affect the Solar Garden Members in any material respect, or to cure any ambiguity, correct or supplement any provision in this Solar Garden LLC Agreement not inconsistent with law or with other provisions, or make other changes with respect to matters arising under this Solar Garden LLC Agreement that will not be inconsistent with law or with the provisions of this Solar Garden LLC Agreement; and

(iv) to satisfy any requirements, conditions, or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state agency or contained in federal or state law.

The Solar Garden LLC Manager will provide notice to the Solar Garden Members promptly after any action under this Section 12.11(b) is taken.

(c) Amendments to this Solar Garden LLC Agreement may be executed by the Solar Garden LLC Manager alone provided that the Solar Garden LLC Manager shall also execute a certificate filed with the records of the Solar Garden LLC to the effect that, (i) if such amendment required consent of Solar Garden Members or other Members under Section 12.11, the requisite percentage in interest of the Solar Garden Members or other Members voted in favor of such amendment or (ii) the amendment required no consent of any other Member under Section 12.11.

Section 12.12 Counterparts; Execution. This Solar Garden LLC Agreement may be executed in counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on all the parties hereto, notwithstanding that all parties shall not have executed the same counterparts. A Person may be admitted as a Solar Garden Member and become bound by this Solar Garden LLC Agreement if such Person (or a representative authorized by such Person in writing) executes this Solar Garden LLC Agreement or any other writing, including without limitation a subscription agreement, evidencing the intent of such Person to become a Solar Garden Member, which writing is accepted by the Solar Garden LLC Manager, and such Person otherwise complies with any other conditions for becoming a Solar Garden Member as set forth in this Solar Garden LLC Agreement. Each Solar Garden Member, including any Substituted Solar Garden Member, additional Solar Garden LLC Manager, and successor Solar Garden LLC Manager shall become a signatory hereto by signing counterpart signature pages to this Solar Garden LLC Agreement or of an amendment to this Solar Garden LLC Agreement or a power of attorney to the Solar Garden LLC Manager therefor, and any other instrument or instruments deemed necessary by the Solar Garden LLC Manager. Upon acceptance by the Solar Garden LLC Manager, each such Solar Garden Member, including any Substituted Solar Garden Member, additional Solar Garden LLC Manager, or successor Solar Garden LLC Manager, as the case may be, shall be deemed to have adopted, and to have agreed to be bound by, all the provisions of this Solar Garden LLC Agreement.

Section 12.13 Power of Attorney. Each Solar Garden Member, by execution of this Solar Garden LLC Agreement or by authorizing a representative, through power of attorney or otherwise, to execute this Solar Garden LLC Agreement, irrevocably constitutes and appoints the Solar Garden LLC Manager to act as such Solar Garden Member's true and lawful attorney-in-fact and agent, with full power and authority in such Solar Garden Member's name, place, and

stead to execute, acknowledge, and deliver, and to file or record in any appropriate public office: (a) any certificate or other instrument that may be necessary, desirable, or appropriate to qualify the Solar Garden LLC as a limited liability company or to transact business as such in any jurisdiction in which the Solar Garden LLC conducts business; (b) any amendment to the Solar Garden LLC's Certificate of Organization or this Solar Garden LLC Agreement or to any certificate or other instrument that may be necessary, desirable, or appropriate to reflect an amendment approved in accordance with the provisions of this Solar Garden LLC Agreement; (c) the execution and delivery of any assignments and other documents on behalf of any Defaulting Investor necessary or appropriate to effect a transfer of the Solar Garden Members Interest of a Defaulting Investor permitted by Section 3.05; and (d) any certificates or instruments that may be necessary, desirable, or appropriate to reflect the dissolution and winding up of the Solar Garden LLC in accordance with the provisions of this Solar Garden LLC Agreement. This power of attorney will be deemed to be coupled with an interest and will survive the Transfer of a Solar Garden Member's Interest or any portion thereof and shall not be affected by the subsequent bankruptcy, death, adjudication of incompetence or insanity, disability, incapacity or dissolution of any person hereby giving this power. Notwithstanding the existence of this power of attorney, each Solar Garden Member agrees to join in the execution, acknowledgment, and delivery of the instruments referred to above if requested to do so by the Solar Garden LLC Manager. This power of attorney is a limited power of attorney and does not authorize any Solar Garden LLC Manager to act on behalf of a Solar Garden Member except as described in this Section 12.13.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, this Solar Garden LLC Agreement is executed as of the date first set forth above.

**SOLAR GARDEN LLC MANAGER:**

\_\_\_\_\_  
Worth Robbins

**SOLAR GARDEN MEMBERS:**

All Persons now and hereafter admitted as Solar Garden Members of the Solar Garden LLC, pursuant to Powers of Attorney and authorizations now and hereafter executed in favor of, and granted and delivered to the Solar Garden LLC Manager:

By: \_\_\_\_\_  
Worth Robbins, Attorney-In-Fact

**SOLAR GARDEN LLC REGISTER**

<b><u>Solar Garden LLC Manager &amp; Members</u></b>	<b><u>Capital Contribution*</u></b>	<b><u>Units</u></b>	<b><u>Address</u></b>
<b>Solar Garden LLC Manager</b>			
Worth Robbins	\$0	0	115 Massachusetts Avenue, Harvard, MA 01451
<b>Solar Garden Members</b>			
	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
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	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
	\$ _____	_____	
<b>Total:</b>	\$ _____	284 Units	

\* Subject to increase pursuant to Section 3.02(e).