

MINUTES

Page 1

BOARD OF ASSESSORS

Date: 11/21/2019

Present: Jude T. Cristo, George R. Valery, Jonathan M. Cammuso, Principal Assessor Keomani, and Maureen Trottier

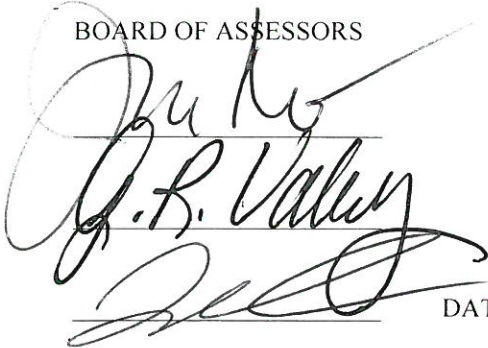
Start time 6:30 pm

Absent:

The Board acted on the following:

- 1) The Board reviewed and signed the minutes from the 11/12/2019 meeting.
- 2) The Board discussed and made a motion to accept Assessor George R. Valery as the Board's Representative for the Town Manager Search Committee.
- 3) The Board reviewed and signed a solar pilot agreement for the Town of Millbury with Millbury Ma 1 LLC contingent upon approval by the Board of Selectmen.
- 4) The Board reviewed and discussed the final tax classification numbers with Principal Assessor Keomani.

BOARD OF ASSESSORS

The block contains three handwritten signatures in black ink. The first signature is 'Jude T. Cristo', the second is 'G.R. Valery', and the third is 'Jonathan M. Cammuso'. They are written over a horizontal line.

DATE: December 11, 2019

RECEIVED
TOWN CLERK
2019 DEC 12 AM 9:12
MILLBURY, MASS.

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

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR PERSONAL PROPERTY (this "Agreement") is made and entered into as of the ____ day of _____, 20__ by and between **MILLBURY MA 1 LLC**, a Delaware Limited Liability Company with an address of 111 Speen St. Suite 410 Framingham, MA 01701 (the "Developer"), and the **TOWN OF MILLBURY**, a municipal corporation duly established and existing under the laws of the Commonwealth of Massachusetts with an address of 127 Elm Street, Millbury, MA 01527 (the "Town"). The Developer and the Town are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party."

Whereas, the Developer plans to build and operate a photovoltaic generating facility and ancillary equipment (the "Project") with an expected nameplate capacity of approximately 1.408 MW/DC on property located on 289 Riverlin St. Millbury (during negotiations, address referred to as 297 Riverlin St. by Clean Energy), shown on Millbury Assessors Map 12-4, respectively, as more particularly described in Exhibit A (the "Project Site");

Whereas, the Developer represents that it is a "generation company" or "wholesale generation company" as those terms are used and defined in M.G.L. c. 59, § 38H(b), and M.G.L. c. 164, § 1, and the Town relies on this representation in entering into this Agreement;

Whereas, it is the intention of the Parties that Developer make certain payments to the Town for the term of this Agreement in lieu of all personal property taxes on the Project, in accordance with Chapter 59, Section 38H of the General Laws of Massachusetts (the "PILOT Statute");

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

Whereas, except as provided herein, the Parties intend that, during the term of the Agreement, this Agreement will provide for the exclusive payments in lieu of such taxes during the term hereof; provided, however, that this Agreement does not include and shall not affect any other taxes or fees that may be owed now or in the future by the Developer and the owner of the Project Site, including, but not limited to, real property taxes for the Property (including buildings and, excluding the Project, fixtures and improvements located thereon), and taxes for personal property other than the Project, which taxes, if any, shall continue to be assessed by the Town in accordance with applicable laws and regulations;

Whereas, the Town is authorized to enter into this Agreement with the Developer, provided the payments in lieu of personal property taxes over the life of the Agreement are expected at inception to approximate the personal property tax payments that would otherwise be determined under Chapter 59 of the General Laws of Massachusetts based upon the full and fair cash valuation of the Project;

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

Now, Therefore, in exchange for the mutual commitments and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. PAYMENT IN LIEU OF PERSONAL PROPERTY TAXES

The Developer agrees to make payments to the Town in lieu of personal property taxes beginning January 1, 2020 for a period of twenty (25) consecutive years (the "Term"), commencing with Fiscal Year 2020 (the first quarterly payment date being February 1, 2020), and ending with Fiscal Year 2045 (the last quarterly payment date being May 1, 2045), in the amounts per year in Exhibit B. Each annual payment will be paid to the Town in four (4) equal (or, in the Town's reasonable discretion in order to conform payments to the Board of Assessor's valuation of the Project, slightly unequal) quarterly installments on or before August 1, November 1, February 1 and May 1 of each fiscal tax year during the term of this Agreement and the annual payment amount and payment date will be noted on a quarterly bill issued by the Town to the Developer. Notwithstanding the foregoing, in the event that all or a portion of the Project has not been installed as of January 1, 2020, the Term will be adjusted to begin with the first fiscal year following the first January 1 on which all or a portion of the Project has been installed. Except to the extent that Paragraphs 2, 3 and 4 of the Agreement provide otherwise, the Developer agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor, revaluation or reduction in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in Exhibit B, and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor, revaluation or increase in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in Exhibit B.

2. IMPROVEMENTS OR ADDITIONS, RETIREMENTS

To the extent that the Developer, at its sole option, makes any capital improvements to the Project or adds additional personal property on or after the Project achieves its Commercial Operation: Date (as defined in its Power Purchase Agreements) (the "Completion Date"), the remaining payments in lieu of taxes will be increased as described in Paragraph 3. To the extent that the Developer, at its sole option, retires or removes any capital improvements from the Project or retires or removes any personal property from the Project on or after the Completion Date, the remaining payments in lieu of taxes will be decreased as described in Paragraph 3. Notwithstanding the foregoing, consistent with applicable Massachusetts Department of Revenue regulations, only the addition of equipment on or after the Completion Date that adds value to the Project (not including replacement of existing equipment, machinery and pollution control and other equipment that is exempted from local property taxes) will lead to an increase in the payments in lieu of taxes due under this Agreement.

No additional payments in lieu of property taxes will be due or required for (i) replacement of personal property or equipment or machinery that is nonfunctional, obsolete or is replaced solely due to wear and tear or casualty or as part of scheduled or unscheduled maintenance or (ii) pollution control or other equipment that is exempted from taxation by the provisions of Chapter 59, Section 5 (44) of the General Laws of Massachusetts or other applicable laws or regulations in effect from time to time or (iii) equipment installed as required by or in response to any statute, law, regulation, consent decree, order or case mandating additional control of any emission or pollution.

3. CALCULATION OF ADJUSTMENT

Except as otherwise provided in Paragraph 2, to the extent that on or after the Completion Date, the Developer makes capital improvements to the Project or adds new personal property or equipment to the Project that would increase the generating capacity of the Project and thereby increase the value of the Project under applicable Massachusetts Department of Revenue regulations, the remaining annual payments in lieu of taxes under this Agreement will be increased by the percentage increase in generating capacity. To the extent that on or after the Completion Date, the Developer retires or removes property from the Project so as to decrease the generating capacity of the Project, the remaining annual payments in lieu of taxes under this Agreement will be decreased by the percentage decrease in generating capacity.

4. INVENTORY

During the Term, within six (6) months after the Completion Date, the Parties will agree on a mutually acceptable inventory of personal property incorporated into the Project as of the Completion Date (the "Inventory"). The Inventory will itemize all personal property subject to taxation and adjustment pursuant to Paragraph 3 and all personal property exempted from taxation and adjustment pursuant to Paragraph 3, and will identify the aggregate value of each category of the personal property (such categories to be mutually agreed to by the Parties.). The general categories for the Inventory are listed in Exhibit C. The Parties agree that the categories include all costs for taxable items that will be incurred by the Developer in completing the Project. The Town, its officers, employees, consultants and attorneys will have the right to inspect the Project, at reasonable times and upon reasonable notice and subject to compliance with all the Developer's safety requirements, in connection with the preparation of the Inventory. The Developer will update the Inventory annually on or before September 30 of each year following the first anniversary of the Commercial Operation Date, and an updated written Inventory (together with a statement regarding the Project's generating capacity) will be provided to the Town on or before October 15 of each year. The Town, its officers, employees, consultants and attorneys will have the right to periodically inspect the Project at reasonable times and on reasonable prior notice to the Developer, subject to the Town agreeing to comply with all the Developer's safety requirements, and to review documents in the possession of the Developer

that relate to the inventoried property for the purpose of verifying that the Developer has accurately updated the Inventory.

5. PAYMENT COLLECTION

The Parties agree that the provisions of Chapter 60 of the General Laws of Massachusetts and other applicable law will govern the collection of any payments in lieu of taxes provided for in this Agreement as though they were real property taxes due and payable to the Town. The Developer acknowledges that if it is not owner of the Project Site then the owner of the Project Site has expressly agreed to this provision in the Site Lease to the Project Site. The owner of the Project Site has confirmed said acknowledgement by signing this Agreement or providing a side letter acknowledging this provision. The parties hereto acknowledge that said signature shall solely be for the purpose of acknowledging and authorizing the foregoing provision regarding payment collection. The Developer as owner of the Inventory (also known as the "Property") hereby expressly agrees and assents to this provisions of this paragraph.

6. TAX STATUS, SEPARATE TAX LOT

The Developer agree that during the term of this Agreement, annually, the Town will assess as personal property the Inventory at an amount which when multiplied by the Town's annual personal property tax rate will equal the agreed upon payments for each such Fiscal Year in accordance with Section 1, and that this Agreement will exclusively govern the payments of all such personal property taxes attributable to the Project, and the payments in lieu of such taxes that the Developer will be obligated to make to the Town for the Project. The Developer expressly understands that the Town will continue to assess the real estate on which the project is constructed at its full and fair cash value (not including the Property) and that the Developer or owner of the Project Site from time to time shall be required to pay real estate taxes due as a result of this assessment as required by the applicable provisions of the General Laws of Massachusetts. For avoidance of doubt, the Town agrees that during the Term, this Agreement will exclusively govern the payments of all personal property taxes and payments in lieu of such taxes that the Developer will be obligated to make to the Town with respect to the Project and the Property, provided, however, that this Agreement is not intended to affect, and will not preclude, other assessments of general applicability by the Town for excise taxes on vehicles due pursuant to Chapter 60A of the General Laws of Massachusetts and for services provided by the Town to the Project, including but not limited to, water and sewer services. Further, the Town agrees that during the Term no personal property taxes will be due from or assessed to the Developer with regard to the Property or the associated personal property other than the payments in lieu of taxes described in this Agreement.

7. SUCCESSORS AND ASSIGNS

This Agreement will be binding upon the successors and assignees of the Developer as owner of the Project, and the obligations created hereunder will run with the Property and the Project. The Developer may assign this Agreement in whole or in part with the advance written consent of the Town, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, in

the event that the Developer sells, transfers, or assigns the Property and/or all or substantially all of its interest in the Project, this Agreement shall (without prior notice to or consent of the Town) be assigned to and will thereafter be binding on such purchaser, transferee or assignee as may thereafter own and hold title to the Project and the Property. A Notice of this Agreement will be recorded in the applicable Registry of Deeds forthwith upon execution.

8. STATEMENT OF GOOD FAITH / WAIVER OF RIGHT TO SEEK ABATEMENT

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

9. ADDITIONAL DOCUMENTATION AND ACTIONS

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

10. NOTICES

All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and given to the Parties or the Lender (defined below) at

their respective addresses set forth below, and shall be deemed given when delivered, if personally delivered, or upon the third day after deposit with the United States Postal Service, if mailed by United States registered or certified mail, postage prepaid, return receipt requested, or upon the day following deposit with a nationally recognized overnight courier, if sent overnight by such courier. Either Party may change the address to which future notices should be sent hereunder by providing written notice of such change of address to the other Party in accordance with the notice provisions of this paragraph.

To Developer:

MILLBURY MA 1 LLC
Attn: Michael T. Bakas
111 Speen Street, Ste 410
Framingham MA 01701

To Town of Millbury

James Kelley
Acting Town Manager
Town of Millbury
127 Elm Street
Millbury, MA 01527

with copies to:
Millbury Board of Assessors
Town of Millbury
127 Elm Street
Millbury, MA 01527

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

11. APPLICABLE LAW

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

12. GOOD FAITH

The Town and the Developer shall act in good faith to carry out and implement this Agreement.

13. FORCE MAJEURE

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

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

In the event an event of Force Majeure occurs during the term of this Agreement with respect to any portion of the Property or Project that renders all or a portion of the Project unusable for the customary purpose of the production of electricity for a period of more than sixty (60) days, then the Developer may, at its election, notify the Town of the existence of this condition as well as of its decision whether or not to rebuild that portion of the Property or Project so damaged or destroyed or taken. If the Developer elects not to rebuild, then it may notify the Town in writing, and the Property and Project will thereafter make payments hereunder on a pro-rated basis (calculated in the manner set forth in Section 3).

14. COVENANTS OF DEVELOPER

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

- a. Seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement, except as expressly provided herein; or
- b. Convey by sale, lease or otherwise any interest in the Project to any entity or organization that qualifies as a charitable organization pursuant to Chapter 59 Section 5 (Third) of the General Laws of Massachusetts unless this Agreement or comparable substitute agreement is lawfully reaffirmed to ensure continuation of the payments hereunder; or
- c. Apply for any abatement or other reduction of the amounts due hereunder except as expressly provided for herein; or
- d. Fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement.

15. COVENANTS OF THE TOWN OF MILLBURY

So long as the Developer is not in breach of this Agreement during its Term, which breach remains uncured by the Developer or the Lender (such Lender having the right, but not the obligation to act on the Developer's behalf to cure any breach or default by the Developer) for more than thirty (30) days following written notice of such breach delivered by the Town to the Developer and the Lender in accordance with the notice provisions hereof or, in the event of a

default, other than a payment default, which the Developer is not reasonably capable of curing within such thirty (30) day period, such longer period of time as the Developer reasonably requires to effectuate such cure, the Town will not do any of the following:

- a. Seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement; or
- b. Seek to collect from the Developer any personal property tax upon the Property or the improvements thereon (including the Project) in addition to the amounts herein except as provided in Paragraph 16 hereof; or
- c. Impose any lien or other encumbrance upon the Property or the improvements thereon (including the Project) for non-payment of personal property taxes except as is provided by the provisions of Chapter 60 of the General Laws of Massachusetts or expressly provided herein.

16. LENDER'S RIGHT TO CURE

The Town shall send a copy of any notice of default sent to the Developer, to any secured lender providing financing to the Developer in connection with the Project (the "Lender") by certified mail at the same time such is notice is sent to the Developer, provided that the Developer has given notice, and updated notice where applicable, to the Town of the Lender's name and address. Where this Agreement expressly provides for a cure of said default, no such notice of default to the Developer shall be effective unless and until a copy of such notice has been delivered to the Lender, and the applicable cure period, beginning on the date of such delivery, has expired. The Lender shall have the same time and rights to cure any default as the Developer, and the Town shall accept a cure by the Lender as if such cure had been made by the Developer, provided said cure is made in accordance with the provisions of this Agreement.

17. CERTIFICATION OF TAX COMPLIANCE

Pursuant to Chapter 62C, Section 49A of the General Laws of Massachusetts the undersigned the Developer by its duly authorized representative certifies that it is in tax compliance with the tax laws of the Commonwealth of Massachusetts.

Further, the Developer hereby certifies that it and the owner of the Project Site are current and in compliance with all real estate taxes, personal property taxes and other municipal charges due the Town of Millbury and shall remain current and in compliance with such real estate taxes, personal property taxes and other municipal charges for the Term. The failure to comply with this section, after written notice of said failure and an opportunity to cure within thirty (30) days after said written notice, shall be cause for the Town of Millbury to assess a Non-Compliance Assessment equal to the difference between the amount of the PILOT payments received as of the date of said notice from the Town of Millbury and the amount of total personal property tax that otherwise would have been assessed by the Town of Millbury for the Project from January 1, 2020 to the date of said written notice had the personal property of Project been assessed by the Town of Millbury as provided in Chapter 59 of the General Laws of Massachusetts. Said

amount shall be deemed to be part of the Payment in Lieu of Taxes and shall be subject to collection as provided herein.

18. COMPLIANCE WITH PILOT STATUTE

The Town shall timely comply with any recordkeeping, filing or other requirements mandated by the Massachusetts Department of Revenue in connection with the Department's implementation of the PILOT Statute.

19. INVALIDITY

If, for any reason, it is ever determined by the Massachusetts Appellate Tax Board or by any other court of competent jurisdiction that any material provision of this Agreement is unlawful, invalid or unenforceable then the parties shall (i) undertake best efforts to amend and or reauthorize this Agreement so as to render all material provisions lawful, valid and enforceable, and (ii) if such efforts are unsuccessful, undertake reasonable efforts, including without limitation, seeking all necessary approvals, to replicate the benefits and burdens of this Agreement in the form of a tax increment financing agreement pursuant to Chapter 40, Section 59 of the General Laws of Massachusetts.

20. REPRESENTATIONS AND WARRANTIES; MISCELLANEOUS

Each Party represents and warrants to the other that it has the power to enter into this Agreement, that the execution, delivery and performance of this Agreement by such Party has been duly authorized and that this Agreement is a legal, valid and binding obligation of such Party enforceable in accordance with its terms. If any section, sentence, clause, or other portion of this Agreement is for any reason held invalid or unconstitutional by any court, federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof. The paragraph headings contained herein are for convenience of reference only and shall not be used to interpret the substantive provisions of this Agreement. This Agreement shall be considered the joint work product of the Parties hereto, and shall not be construed against either Party by reason thereof. This Agreement contains the entire agreement between the Parties concerning its subject matter and supersedes all prior agreements between the Parties concerning such subject matter, whether written or oral. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument and shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without reference to choice of law provisions.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

In Witness Whereof, the parties have executed their hands and seals on the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

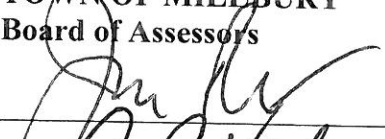
TOWN OF MILLBURY
Board of Selectmen

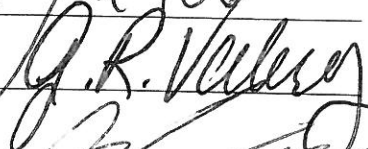
MILLBURY MA 1, LLC

By: 

Title: Authorized Representative

TOWN OF MILLBURY
Board of Assessors





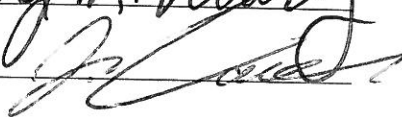


EXHIBIT "A" DESCRIPTION OF PROJECT SITE

The land located at 297 Riverlin Street, Millbury, identified as "Area 479,140 sq. ft. 10.9996 acres" on plan of property prepared by Jarvis Land Survey, Inc. and dated March 17, 2001 entitled "Plan of Property surveyed for Joel and Dawn Scholz, Riverlin Street, Millbury, Massachusetts". Said parcel being 479,140 sq. ft. of 10.9996 acres, more or less. Said Plan is recorded with the Worcester District Registry of Deeds as Plan No. 76 in Plan Book 768.

Subject to a side tract agreement with the New York Central and Hudson Rail Road Company and to certain easements of record for the maintenance of electric transmission lines over said property as described in a document recorded with said Deeds in Book 2898, Page 158, insofar as the same are in force and applicable.

Subject to a right to pass and repass with vehicles or otherwise by New England Power Construction Company as described in a document recorded with said Deeds in Book 2497, Page 83, insofar as the same are in force and applicable.

EXHIBIT "B"

AMOUNT OF PAYMENT IN LIEU OF PERSONAL PROPERTY TAX

During each fiscal year of the Town following the Execution of this Agreement during the Term (each, a "Fiscal Year"), the Developer will make annual PILOT Payments to the Town in the following amounts, payable in accordance with Paragraph 2 of the Agreement:

- i. during the first Fiscal Year, the PILOT Payment shall be the sum of **12,500 per MW DC**; and
- ii. during the second consecutive Fiscal Year and during each consecutive Fiscal Year thereafter, the PILOT Payment will be the amount of the PILOT Payment for the immediately prior Fiscal Year, plus **2.5%** of such amount.

EXHIBIT "C"

CATEGORIES OF INVENTORY

- A. Personal Property Subject to Taxation.
- B. Personal Property Exempted from Taxation.