

COVER SHEET
POWER PURCHASE AGREEMENT

Effective Date		
kWh Rate	\$0.08	
Rate Escalator	1% annually	
Buyer	Town of Peterborough, NH	
Seller	Water Street Solar 1, LLC	
Facility address	1 Water Street Peterborough, NH	
Facility size	947 kW DC	
Commercial Operation Date		
Commercial Operation Deadline		
Initial Term	20 years ¹	
Extension Exercise Notice Deadline		
Addresses for Notices	<p>Seller: Water Street Solar 1, LLC 360 22nd St, Suite 600, Oakland, CA 94612 Attn: General Counsel</p> <p>With a copy to:</p> <p>Borrego Solar Systems, Inc. 360 22nd St, Suite 600, Oakland, CA 94612 Attn: General Counsel</p>	<p>Buyer: Town of Peterborough 1 Grove Street Peterborough, NH 03458</p> <p>With a copy to:</p> <p>John J. Ratigan, Esq. Donahue, Tucker & Ciandella, PLLC 225 Water Street Exeter, NH 03833</p>

¹ This will be the period beginning on the Effective Date and ending on the 20th anniversary of the Commercial Operation Date

		<i>[insert notice information]</i>
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EXHIBITS

<u>EXHIBIT A</u>	DEFINITIONS
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<u>EXHIBIT F</u>	CONSENT AND ASSIGNMENT
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<u>EXHIBIT H</u>	PRICE ADJUSTMENTS FOR CERTAIN GOVERNMENTAL CHARGE

POWER PURCHASE AGREEMENT

This Power Purchase Agreement is made and entered into as of [], 2014 (“Effective Date”), by the Town of Peterborough, a New Hampshire municipal corporation, organized under the laws of New Hampshire, having a principal business address of One Grove Street, Peterborough, N.H. 03458 (“Seller”) and [], a [] (“Buyer”). Seller and Buyer may be referred to herein collectively as the “*Parties*,” and individually as a “*Party*.”

1. DEFINITIONS; INTERPRETATION.

1.1 Definitions. Except as otherwise defined on the Cover Sheet or elsewhere in the Agreement, capitalized words and phrases shall be defined as set forth on Exhibit A.

2. TERM AND SELLER CONDITIONS.

2.1 Term. The Agreement shall commence on the Effective Date and shall expire at the end of the Term (as defined below) unless terminated earlier in accordance with the terms hereof. The Initial Term shall be 20 years from the Effective Date. After the Initial Term, the Agreement may be _____ for additional and successive periods of five (5) years each (each a “Renewal Term”) at Buyer’s option on 180 days’ notice to Seller at the kWh Rate, Terminal Values, and Estimated Annual Production values specified for the Renewal Term on Exhibit G. The Initial Term and the subsequent Renewal Terms, if any, are referred to collectively as the “Term.” Seller shall provide written notice to Buyer of its option to extend the term 240 and 210 days prior to the expiration of the Term. This notice requirement shall be satisfied if it is given no earlier than 30 business days prior to the date of notice, nor 5 business days after the date of notice.

2.2 Seller Conditions of the Agreement. In the event that any of the following events or circumstances occurs prior to the Commercial Operation Date, Seller may (at its sole discretion) terminate the Agreement, with written notice to Buyer, in which case neither Party shall have any liability to the other Party:

(a) Seller determines that the Premises, as is, are insufficient to accommodate the System, or would materially increase the cost of Installation Work or would adversely affect the Energy production from the System as designed and Seller has made commercially reasonable efforts to locate and secure alternative site(s) at commercially reasonable costs but has not been able to do so.

(b) There is a material adverse change in the Environmental Financial Attributes of the System or the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Seller or its investors, including any Financing Party.

(c) Seller is unable to obtain financing for the System on terms and conditions satisfactory to it, and Seller has made commercially reasonable efforts to obtain such financing but has not been able to do so.

(d) Seller has not received a fully executed (i) Lease, or (ii) a subordination, release or acknowledgement from any mortgagee of the Premises, and Seller has made commercially reasonable efforts to obtain such Lease or release but has not been able to do so.

(e) Seller has determined that there has been a material adverse change in the rights of Lessor to occupy the Premises or Seller to construct the System on the Premises.

(f) Seller has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to Energy generated by the System.

(g) There has been a material adverse change in Buyer's creditworthiness.

(h) Seller has not received all required approvals or permits from applicable Governmental Authorities in a manner timely enough to allow Seller to begin construction and satisfy the Commercial Operation Deadline and Seller has made commercially reasonable efforts to obtain such required environmental approvals or permits

(i) Seller, otherwise in its discretion, determines that the development of the System should be abandoned.

3. SYSTEM OPERATIONS.

3.1 Seller as Owner and Operator. Seller shall be the legal and beneficial owner(s) of the System at all times. The System shall be operated and maintained and, as necessary, repaired by Seller at its sole cost and expense. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and shall not attach to or be deemed a part of, or fixture to, the Premises.

3.2 Metering. Seller, at Seller's cost, shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of Energy generated by the System (the "Meter") and delivered to the LEU's electric grid. All Meters shall be installed, owned, operated and maintained in compliance with all requirements of the applicable LEU and the ISO.

(a) Meter Reading. Readings of the Meter shall be conclusive as to the amount of Energy generated by the System; provided that if the Meter is out of service, is discovered to be inaccurate pursuant to Section 3.2(c)(iv), or registers inaccurately, the amount of Energy generated by the System shall be determined by estimating by reference to quantities measured during periods of similar conditions when the Meter was registering accurately. Seller shall read the Meter at the end of each calendar month, and shall record the amount of Energy generated by the System and credited to Buyer. The Meter shall be used as the basis for calculating the Energy Payments due under the Agreement.

(b) Regularly Scheduled Testing. Seller shall have the Meter tested every two (2) years at its sole expense by an independent third party with expertise in such testing. Seller shall notify Buyer within ten (10) Business Days of each test, and Buyer shall have the right to attend any test provided that Buyer or Buyer's agent complies with all safety rules and requests of the independent third party performing such testing. Seller shall provide copies of the results of the Meter test to Buyer in a timely manner. In addition, as set forth in Section 3(c), either Party, at its own expense, shall have the right to have the Meter tested at any time throughout the Term.

(c) Testing and Correction. The following steps shall be taken to resolve any disputes regarding the accuracy of the Meter:

(i) If either Party disputes the accuracy or condition of the Meter, such Party shall so advise the other Party in writing.

(ii) The non-disputing Party shall, within fifteen (15) Business Days after receiving such notice from the disputing Party, advise the non-disputing Party in writing as to the disputing position concerning the accuracy of the Meter and the non-disputing Party's reasons for taking such position.

(iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an independent third party to test the Meter.

(iv) If the Meter is found to be inaccurate by not more than 2%, any previous recordings of the Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the Meter shall bear the cost of inspection and testing of the Meter. If the Meter is found to be inaccurate by more than 2% or if such Meter is for any reason out of service or fails to register, then (x) Seller shall promptly cause any such Meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (y) the Parties shall estimate the correct amounts of Energy delivered for a period including the month in which the test occurs and all months extending back to and including the month including the mid-point of the period between the current meter test and the last test date on which the Meter was found to be accurate within the allowed range and Seller shall either invoice or credit Buyer for the difference between the amounts previously paid and the amounts that would have been paid based on the correct amounts of Energy delivered, and (z) Seller shall bear the cost of inspecting and correcting the Meter.

4. DELIVERY OF POWER SERVICES.

4.1 Purchase Requirement. Seller shall deliver all Energy generated by the System to Buyer and Buyer shall accept and purchase such Energy from Seller, beginning on the Commercial Operation Date until the end of the Term. Title and risk of loss to the Energy shall pass from Seller to Buyer at the Point of Delivery. Buyer agrees to purchase one hundred percent (100%) of the Energy generated during the Term.

4.2 Estimated Annual Production. The Estimated Annual Production for each year of the Initial Term is set as forth in Exhibit C. Buyer acknowledges and understands that solar power is an intermittent resource and that the output of the System, which is dependent on the sun and other factors, will constantly vary and that no particular amount of output from the System is guaranteed in amount or time of delivery except as that provided for herein. Beginning on the Commercial Operation Date, the System shall produce not less than seventy percent (70%) of the applicable Estimated Annual Production (the "Minimum Output Requirement") under Standard Insolation Conditions at the Premises as of the Effective Date during the Initial Term, measured on a rolling, three-year, cumulative basis, unless, and then only to the extent that, the failure to satisfy the Minimum Output Requirement is due to (a) System failure, damage or downtime attributable to third parties, (b) inverter failure or delayed repair of an inverter due to manufacturing defects affecting either at least ten percent (10%) of the inverters shipped to Seller or its Affiliates or at least ten percent (10%) of the inverters shipped by the manufacturer or its distributors at any time during the three hundred sixty-five (365) day period preceding the discovery of the defect, (c) general utility outage or any failure of any electrical grid, (d) unauthorized or unexpected usage of the Premises, or buildings at or near the Premises, which may affect building permits, site permits and related requirements for the operation of the System, or that impact insolation striking the System; (e) a Force Majeure Event or (f) acts or omissions of Buyer or the LEU.

4.3 Environmental Financial Attributes and Renewable Energy Credits. Buyer's purchase of Energy does not include Environmental Financial Attributes or Renewable Energy Credits, ownership of which shall be retained by Seller to be marketed or disposed of at Seller's sole discretion. Buyer disclaims any right to Renewable Energy Credits or Environmental Financial Attributes based upon the

installation or operation of the System at the Premises, and shall, at the request of Seller, execute any document or agreement reasonably necessary to fulfill the intent of this Section.

5. PRICE AND PAYMENT.

5.1 Consideration. Commencing on the Commercial Operation Date, Buyer shall pay to Seller a monthly payment (the “Energy Payment”) for the Energy generated by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (0.08¢) the kWh Rate. See Exhibit G.

5.2 Invoice. Seller shall invoice Buyer on or about the first day of each month for the Energy that is delivered hereunder (each, an “Invoice Date”), for the Energy Payment in respect of the immediately preceding month, commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the email account or to the address provided by Buyer by regular first class mail postage prepaid.

5.3 Time of Payment. Buyer shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

5.4 Method of Payment. Buyer shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Seller from time to time. All payments that are not paid when due pursuant to Section 5.3, plus 15 calendar days, shall bear interest accruing from the date 45 days from the invoice date until paid in full at a rate equal to the Stated Rate. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and except as specifically set forth herein, not subject to reduction, withholding, set-off, or adjustment of any kind.

5.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, the Party disputing such invoice shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. To resolve any material dispute regarding invoices the Parties shall use the procedures set forth in Section 17.3. If an amount disputed by either Party is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date as set forth above in Section 5.4 under such invoice until the date paid, and the owing Party shall pay such sum within ten (10) Business days of the date upon which dispute is resolved.

6. GENERAL COVENANTS.

6.1 Seller’s Covenants. Seller covenants and agrees to the following:

(a) Notice of Damage or Emergency. Seller shall promptly notify Buyer if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

(b) System Condition. Seller shall exercise commercially reasonable efforts to ensure that the System is capable of generating Energy under Standard Insolation Conditions at the Premises and is maintained in good order and repair consistent with Good Industry Practice.

(c) Governmental Approvals. While providing the Installation Work, Energy and System Operations, Seller shall obtain, maintain, secure and comply with all Governmental Approvals required to be obtained and maintained and secured by Seller to enable Seller to perform hereunder.

(d) Health and Safety/Security. Seller shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Energy and System Operations. Seller shall be responsible for ensuring the security of the System throughout the Term.

(e) Applicable Law. Seller shall comply in all material respects with any and all applicable provisions of Applicable Law, including any applicable environmental laws, related to Seller's performance of its obligations hereunder.

(f) Interconnection Agreement. Seller, at its cost and expense, shall comply with the terms and conditions of any and all interconnection agreements or any other agreements which are entered into by and between Seller and the LEU.

(g) Buyer's Covenant. Buyer shall ensure that any authorizations required of Buyer under the Agreement are provided in a timely manner. To the extent that only Buyer is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Buyer shall cooperate with Seller to obtain such approvals, permits, rebates or other financial incentives, but at Seller's sole expense. Further, cooperation shall not be construed to mean other than standard review of land use applications or permits by Buyer's independent land use boards.

7. REPRESENTATIONS & WARRANTIES.

7.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization and is in good standing in [];

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement and has the requisite power to own and operate assets and carry on its as it is now being conducted; it has all the rights required to enter into the Agreement and perform its obligations hereunder.

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

(d) no consent of any third party, except for such third party consents that have already been obtained and that are in full force and effect, are required to approve the execution, delivery, and performance of the Agreement;

(e) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

(f) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein;

(g) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a violation, breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and

(h) no declaration, filing or registration with, or notice to, or Approval of any Governmental Authority is necessary for the consummation by such Party of the transactions contemplated hereby which has not already been obtained.

(i) it is an entity with the legal capacity to sue and to be sued, and does not have immunity under any Applicable Law from any legal action, suit or proceeding brought in connection with the performance or enforcement of its obligations under the Agreement, or collection of damages for any breach thereof.

8. TAXES AND GOVERNMENTAL FEES.

8.1 Buyer Obligations. Buyer shall not be responsible for any sales taxes, fees or charges imposed or authorized by any Governmental Authority assessed against Seller due to Seller's sale of the Energy to Buyer.

8.2 Seller Obligations. Subject to Section 8.1 above and Exhibit H to this Agreement, Seller shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System.

9. FORCE MAJEURE.

9.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused by employees of the affected Party or as a result of such Party's failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority, including a moratorium on any activities related to the Agreement, provided that such Governmental Action is not the result of the fault or negligence of the affected Party; (vi) the inability for one of the Parties, despite its reasonable efforts, to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised its reasonable efforts to obtain such Governmental Approval, (vi) inability of the System "EPC" contractor to obtain the make and model of the photovoltaic modules or other equipment or materials included in its scope of work, to the extent such inability results from an event that falls within the definition of Force Majeure Event; and (vii) available insolation at the Site in any applicable period is below Standard Insolation Conditions. A Force Majeure Event shall not be based on the economic hardship of either Party or the ability of a Party to obtain financing on acceptable terms and conditions.

9.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder existing prior to the Force Majeure Event), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 9 shall promptly (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; and provided, however, that Buyer shall not be excused from making any payments and paying any unpaid amounts due in respect of Energy delivered to Buyer.

9.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has prevented Seller from performing all of its material obligations hereunder and that has continued for a continuous period of three hundred sixty-five (365) days, then Buyer shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to Seller. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination). If at the end of such ninety (90) day period such Force Majeure Event is no longer continuing, the Agreement shall remain in full force and effect, and Buyer's notice shall be deemed to have been withdrawn.

10. DEFAULT.

10.1 Seller Defaults and Buyer Remedies.

(a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a "Seller Default"):

- (i) A Bankruptcy Event shall have occurred with respect to Seller;
- (ii) Except to the extent expressly excused in this Agreement, Seller fails to pay Buyer any amount owed under the Agreement within thirty (30) days after receipt of notice from Buyer of such past due amount, except for rent and property taxes, whose notice is controlled by applicable New Hampshire law; and,
- (iii) Seller breaches any material covenant or other material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Buyer's written notice of such breach and Seller fails to so cure, or (B) Seller fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed, subject to a maximum aggregate cure period of 60 days.
- (iv) The Actual System Output, as that term is defined in Section 4.2, is less than the Minimum Output Requirement, as that term is defined in Section 4.2, excluding any and all limitations arising from Force Majeure Events or any default by Buyer, and measured over a rolling, three year, cumulative basis, pursuant to the qualifications and the procedure set forth in Section 4.2.
- (v) If the representations and warranties and other statements made by Seller hereunder misrepresent a material fact as of the Effective Date, and such misrepresentation has a material adverse effect and such effect is not cured within thirty (30) days from the earlier of (a) notice from the Buyer and (b) the discovery or determination by Seller of the misrepresentation; provided, that if Seller commences an action to cure such misrepresentation within such thirty (30) day period, and thereafter

proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days.

(b) Buyer's Remedies. If a Seller Default described in Section 10.1(a) has occurred and is continuing, in addition to all rights and remedies expressly provided herein, and subject to Section 12, Buyer may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement; provided that no such termination or exercise of remedies may occur unless and until written notice of Seller Default has been delivered by Buyer to Seller, and such Seller Default has not been cured within thirty (30) days of delivery of such notice or Seller has failed to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.

10.2 Buyer Defaults and Seller's Remedies.

(a) Buyer Default. The following events shall be defaults with respect to Buyer (each, a "Buyer Default"):

(i) A Bankruptcy Event shall have occurred with respect to Buyer;

(ii) Buyer fails to pay Seller any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Seller of such past due amount; and

(iii) Buyer breaches any material covenant or other material term of the Agreement if (A) such breach can be cured within thirty (30) days after Seller's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed subject to a maximum aggregate cure period of 60 days.

(iv) If the representations and warranties and other statements made by Buyer hereunder misrepresent a material fact as of the Effective Date, and such misrepresentation has a material adverse effect and such effect is not cured within thirty (30) days from the earlier of (a) notice from the Seller and (b) the discovery or determination by Buyer of the misrepresentation; provided, that if Buyer commences an action to cure such misrepresentation within such thirty (30) day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days.

(v) Buyer's default shall not be construed to mean Buyer's decision not to extend the original 20 year term by either one (1) or more additional terms of five (5) years (renewal terms).

Financing Party Rights to Cure. Exhibit F to this Agreement established certain notices and cure rights in favor of the Financing Parties.

10.3 Breach; Termination. If a Buyer Default described in Section 10.2(a) has occurred and is continuing, in addition to all rights and remedies provided at law or in equity, and all the rights and remedies expressly provided to Seller pursuant to this Agreement, Seller may terminate this Agreement and upon such termination, Buyer shall pay to Seller, as liquidated damages, the applicable Terminal Value as set forth in Exhibit B within 30 days of such termination. Seller acknowledges and agrees that the remedies described in this section (including Terminal Value) are available only to the extent Seller, after making commercially reasonable efforts to mitigate damages caused by a Buyer Default has not

been able to mitigate such damages. For avoidance of doubt, (i) if, within 30 days of such termination and prior to the payment of the Terminal Value, in the process of taking commercially reasonable efforts to mitigate Seller's damages resulting from an uncured Buyer breach, Seller is able to secure a binding agreement with an alternate buyer for purchase and sale of any or all of the Energy, capacity or other products available from the System for all or any portion of the remaining Initial Term (the "Replacement Agreement"), the net present value of the Replacement Agreement, as reasonably calculated by Seller, shall be applied against the Terminal Value payable by Buyer, provided that if the net present value of the Replacement Agreement is greater than the Terminal Value any credit/refund shall not exceed the Terminal Value and (ii) Seller's duty to mitigate damages does not require that Seller contract with an alternative buyer for a term substantially less than the remaining amount of the Term or with an alternative buyer with long-term unsecured, unsubordinated debt credit rating of less than "A3" (or the then-equivalent grade) by Moody's Investor Service, Inc. (or any successor thereto) or "A" (or the then-equivalent grade) by Standard & Poor's Rating Group, a division of Standard & Poor's Corporation (or any successor thereto).

10.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Seller or Buyer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

10.5 Attorneys' Fees. If any legal action, arbitration, or other proceeding is brought for the enforcement of the Agreement or because of an alleged dispute, default, misrepresentation, or breach in connection with any of the provisions of the Agreement, except as expressly excluded in the Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, expenses, expert witness fees, and other costs incurred in that action or proceeding in addition to any other relief to which it may be entitled.

10.6 Liquidated Damages Not Penalty. Buyer acknowledges that any applicable Terminal Value constitutes liquidated damages, and not penalties, in lieu of Seller's actual damages resulting from the early termination of the Agreement. Buyer further acknowledges that Seller's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Buyer's rights and obligations under the Agreement, the applicable Terminal Value constitutes fair and reasonable damages to be borne by Buyer in lieu of Seller's actual damages.

11. LIMITATION OF LIABILITY.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES AND REPRESENTATIVES FOR ANY SPECIAL, PUNITIVE, EXEMPLARY DAMAGES IN CONNECTION WITH THE AGREEMENT.

12. ASSIGNMENT.

Neither Party shall assign any of its rights, duties or obligations under this Agreement without the prior consent of the other, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Seller may, without consent from Buyer, assign any of its rights, duties or obligations under this Agreement: (i) to a Financing Party, (ii) to one or more of its Affiliates or (iii) to any Person or entity succeeding to all or substantially all of the assets of Seller, provided that such assignee can reasonably demonstrate the financial and technical wherewithal to perform the obligations of Seller hereunder. In order to facilitate financing of the System, Buyer agrees to enter into a consent and assignment agreement with Seller's Financing Party substantially in the form attached hereto as Exhibit [] and such other documents as may be reasonably requested by the Financing Party in

connection with its financing of the System. An assignment by either Party in accordance with this Section 12 shall relieve the assignor of its obligations hereunder, except with respect to undisputed payments due by the assignor as of the effective date of the assignment, which obligations shall be performed by assignor or assignee as a condition precedent to such assignment.

13. NOTICES.

All Notices under this Agreement shall be made in writing to the Addresses and Persons specified on the Cover Sheet. Notices shall be delivered by hand delivery, regular overnight delivery service, sent by registered or certified mail, return receipt requested. Notices shall be deemed to have been received when delivered as shown on the records or manifest of such courier, delivery service or the U.S. Postal Service. Rejection or refusal to accept delivery of any notice shall be deemed to be the equivalent of receipt of any notice given hereunder. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 13.

14. CONFIDENTIALITY.

15. INDEMNITY.

15.1 Subject to Section 11 (Limitation of Liability), to the fullest extent permitted by Applicable Law, each Party ("Indemnifying Party") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, affiliates and representatives (each, an "Indemnified Party") from and against any and all Losses incurred by third parties, including but not limited to Losses arising from personal injury or death, or damage to property to the extent such Losses result from or arise out of the negligence, willful misconduct or violation of Applicable Law by the Indemnifying Party, its employees, subcontractors or agents. Such indemnification shall not apply to the extent Losses result from or arise out of the negligence, fraud, willful misconduct or violation of Applicable Law by an Indemnified Party and the Indemnified Party's obligation to pay Losses shall be reduced in proportion to the percentage by which its negligence, errors or omissions caused or contributed to the Losses.

15.2 If an Indemnified Party determines that it is entitled to defense and indemnification under this Section, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the Losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the Losses. Defense shall be provided by legal counsel of the Indemnified Party's choosing. No admission, offer or settlement, or settlement that would impose costs or expense upon the Indemnified Party shall be made without such party's prior written consent.

16. SYSTEM LOSS AND INSURANCE.

16.1 In the event of any System Loss that, in the reasonable judgment of Seller, results in damage, destruction or loss of the System, Seller shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Buyer whether Seller is willing, notwithstanding such System Loss, to repair or replace the System. In the event that Seller notifies Buyer that Seller is not willing to repair or replace the System, the Agreement will terminate automatically effective upon the delivery of such notice Seller shall not be required to rebuild or restore the System if such action would be uneconomic or not commercially reasonable, as determined by Seller in its sole discretion.

16.2 Seller shall maintain throughout the Term, and shall furnish Buyer with evidence upon reasonable request, of general liability insurance in the amount of \$2,000,000 and property insurance in an amount to be determined but deemed reasonably sufficient to restore or replace the System in the event of a casualty occurring during at least the first 10 years of the Term, with each policy to be issued by underwriters with an A.M. Best rating of at least "A".

17. MISCELLANEOUS.

17.1 Integration; Exhibits. The Agreement, together with the Exhibits, Schedules, and Appendices attached thereto and hereto, constitute the entire agreement and understanding between Seller and Buyer with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits, Schedules, and Appendices attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference.

17.2 Amendments. The Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer.

17.3 Disputes.

(a) If any dispute arises under this Agreement (a "Dispute"), within ten (10) Days following the delivered date of a written request by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative (individually, a "Party Representative", together, the "Parties' Representatives"), and (ii) the Parties' Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. If the Parties' Representatives cannot so resolve the Dispute within thirty (30) days after commencement of negotiations, within ten (10) Days following any request by either Party at any time thereafter, each Party Representative (A) shall independently prepare a written summary of the Dispute describing the issues and claims, (B) shall exchange its summary with the summary of the Dispute prepared by the other Party Representative, and (C) shall submit a copy of both summaries to a senior officer of the Party Representative's Party with authority to irrevocably bind the Party to a resolution of the Dispute. Within ten (10) Business Days after receipt of the Dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within fourteen (14) days following receipt of the Dispute summaries by the senior officers, either Party may pursue any and all available legal remedies at law or in equity.

(b) Each Party hereby knowingly, voluntarily and intentionally waives any rights or privileges it may have to a trial by jury in respect of any litigation based upon, or arising out of, under, or in connection with, this Agreement or any course of conduct, course of dealing, statements (whether oral or written) or actions of the other Party related hereto and expressly agrees to have any Disputes be adjudicated by a judge of a court having jurisdiction without a jury. In the event of litigation relating to the subject matter of this Agreement, the non-prevailing Party shall reimburse the prevailing Party for all reasonable attorney's fees and all other costs and expenses resulting therefrom.

17.4 Limited Effect of Waiver. The failure of Seller or Buyer to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

17.5 Survival. The obligations under Sections 2.2 (Breach; Termination), Section 7 (Representations & Warranties), Section 8 (Taxes and Governmental Fees), Section 11 (Limitation of Liability), Section 12 (Assignment), Section 14 (Confidentiality), Section 15 (Indemnification), and Section 17 (Miscellaneous) shall survive the expiration or termination of the Agreement for any reason.

For the avoidance of doubt, the expiration or earlier termination of this Agreement shall not relieve the Parties of duties or liabilities that by their nature should survive such expiration or termination, prior to the term of the applicable statute of limitations, including Energy warranties, remedies, or indemnities which obligations shall survive for the period of the applicable statute(s) of limitation.

17.6 Governing Law. The Agreement is made and entered into and shall be interpreted in accordance with the applicable laws of New Hampshire. The Parties hereby submit to the exclusive jurisdiction of the State courts of New Hampshire, and venue is hereby stipulated as Hillsborough County Superior Court.

17.7 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

17.8 Relation of the Parties. The relationship between Seller and Buyer shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Seller and Buyer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

17.9 Successors and Assigns. The Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Seller and Buyer and their respective successors and permitted assigns.

17.10 Counterparts. The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

17.11 Facsimile Delivery. The Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

17.12 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code. Each Party represents and warrants, solely as to itself, that it is (i) a "forward contract merchant" within the meaning of the United States Bankruptcy Code and (ii) an "eligible commercial entity" and an "eligible contract participant" within the meaning of the United States Commodities Exchange Act.

[Remainder of page left blank]

[Signatures on Next Page]

IN WITNESS WHEREOF, the Buyer and Seller have executed this Agreement as of the Effective Date.

SELLER: Water Street Solar 1, LLC

By: _____

Name: _____

Title: _____

BUYER: Town of Peterborough, NH

By: _____

Name: _____

Title: _____

EXHIBIT A

Definitions and Interpretation

“Actual Monthly Production” means the amount of Energy recorded by Seller’s metering equipment during each calendar month of the Term, pursuant to Section 3.2.

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person. The term “control” (including the terms “controls,” “under the control of” and “under common control with”) means the possession, directly or indirectly, of the right, power and authority to direct or cause the direction of the management or policies of a person or entity, whether through ownership interest, by contract, or otherwise.

“Agreement” means this Power Purchase Agreement and all exhibits, schedules and appendices (each an “Exhibit”, “Schedule”, or “Appendix”, as applicable) attached hereto and thereto.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority. This Agreement shall be construed under the laws of New Hampshire.

“Bankruptcy Event” means with respect to a Party, that either:

(i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or

(ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in [INSERT STATE] are required or authorized by Applicable Law to be closed for business.

“Buyer” has the meaning set forth in the Preamble.

“Buyer Default” has the meaning set forth in Section 11.5(a).

“Commercial Operation Date” means the date on which testing in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by the majority of photovoltaic system integrators in the United States indicate that the applicable System is capable of generating Energy for four (4) continuous hours, measured at the Point of Delivery, using such instruments and meters as have been installed for such purposes, and the interconnection to the LEU’s electric grid and all review and approvals have been provided by the applicable utility and [INSERT STATE].

“Commercial Operation Deadline” means the date which is three hundred sixty-five (365) days from the Effective Date; provided, however, that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure Event, breach of the Agreement by Buyer, or other action or inaction on the part of Buyer or any other third party occurring after the Effective Date and prior to the Commercial Operation Date.

“Confidential Information” has the meaning set forth in the MNDA.

“Dispute” and “Dispute Notice” have the meanings set forth in Section 18.3.

“Effective Date” has the meaning set forth in the Preamble.

“Energy” means electric energy generated by the System.

“Energy Payment” has the meaning set forth in Section 5.1.

²“Environmental Financial Attributes” shall mean, Energy, each of the following financial rebates and incentives created under any present or future local state, local, federal or international law or voluntary program that is in effect as of the Effective Date or may come into effect in the future: (i) solar renewable energy certificates (SRECs); (ii) other state, regional, or federal renewable energy certificates (RECs) however so named or referred to (including, but not limited to Renewable Portfolio Standard (RPS) Class I RECs); (iii) incentive tax credits or other tax benefits, and accelerated depreciation (collectively, “allowances”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the System; (iv) net-metering credits or similar credits; (v) any other emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the generation of energy by a solar renewable energy facility; and (v) all reporting rights with respect to such allowances.

“Estimated Annual Production” means the Estimated Annual Production for the applicable year of the Term as set forth in Exhibit C.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Seller (or an Affiliate of Seller) leases the System or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide capital to Seller (or an Affiliate of Seller) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 9.1.

“Good Industry Practice” means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry in the operation and maintenance of generating equipment similar in size and technology to the System) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.

² Note: This section will be edited to match jurisdiction in question.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means the LEU, ISO and/or any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

“Initial Term” has the meaning set forth on the Cover Sheet.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Invoice Date” has the meaning set forth in Section 5.2.

“ISO” means the local independent system operator.

“kWh Rate” has the meaning set forth on the Cover Sheet.

“Lease” means the Option and Lease Agreement by and between Seller and Lessor dated [].

“Lessor” means the Town of Peterborough, N.H.

“LEU” means the local electric distribution owner and operator providing electric distribution services to Buyer and also providing electric distribution and interconnection services to Seller for Seller’s Systems located on Lessor’s real property.

“Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all reasonable attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

“Meter” has the meaning set forth in Section 3.2.

“Minimum Output Requirement” has the meaning set forth in Section 4.2.

“MNDA” means the “Mutual Non-Disclosure And Non-Circumvention Agreement entered into between the Parties dated []).

“Party” or “Parties” has the meaning set forth in the Introductory paragraph above.

“Party Representative” has the meaning set forth in Section 18.3.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Point of Delivery” means the physical location, as set forth on Exhibit D, where the System connects to the LEU electric grid, at which point custody and control of the Energy generated by the System is transferred from Seller to Buyer.

“Premises” has the meaning set forth in the Lease.

“Seller” has the meaning set forth in the Preamble above.

“Seller Default” has the meaning set forth in Section 10.1(a).

“Renewable Energy Credits” means all certificates (including Tradable Renewable Certificates), green-e tags, solar renewable energy credits or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of Energy from a renewable energy source by a renewable energy facility attributed to the output during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date, are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3, administered by the Center of Resource Solutions) or for which a market may exist at a future time.

“Renewal Term” has the meaning set forth in Section 2.1.

“Standard Insolation Conditions” means that the aggregate available solar irradiation resource at the location of the System (the "Site") for all hours in any applicable three hundred sixty-five (365) day period is not more than twelve percent (12%) below the average amount of the aggregate solar irradiation for the Site set forth in the National Renewable Energy Laboratory's TMY3 dataset, and the Parties acknowledge and agree that if the aggregate available solar irradiation resource at the Site for all hours in any applicable three hundred sixty-five (365) day period is more than twelve percent (12%) below the average amount of the aggregate solar irradiation set forth in the National Renewable Energy Laboratory's TMY3 dataset, such occurrence shall constitute a Force Majeure Event.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

“System” means the integrated assembly of photovoltaic modules, mounting assemblies, inverters, conduit, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, owned by Seller and located on Lessor's real property which is used to generate Energy.

“System Loss” means loss, theft, damage or destruction of the System, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure) other than (i) Seller's gross negligence or intentional misconduct, (ii) Seller's breach of maintenance obligations under the Agreement, or (iii) normal wear and tear of the System.

“System Operations” means Seller's operation, maintenance and repair of the System.

“Term” has the meaning set forth in Section 2.1.

“Terminal Value(s)” means the value or values, as applicable, set forth in Exhibit B.

Interpretation. The captions or headings in the Agreement are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words “include,” “includes,” and “including” mean include, includes, and including “without limitation” and “without limitation by specification.” The words “hereof,” “herein,” and “hereunder” and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” in this Agreement refer to the Articles and Sections of this Agreement.

EXHIBIT B

TERMINAL VALUES

The applicable Terminal Value with respect to the applicable System under the Agreement shall be as set forth below:

Year	Termination Fee
1	\$2,166,092
2	\$1,948,518
3	\$1,727,417
4	\$1,502,559
5	\$1,320,815
6	\$1,029,572
7	\$1,014,818
8	\$999,124
9	\$982,427
10	\$964,660
11	\$945,749
12	\$925,616
13	\$904,177
14	\$881,340
15	\$857,008
16	\$831,076
17	\$803,429
18	\$773,945
19	\$742,494
20	\$708,932

EXHIBIT C

ESTIMATED ANNUAL PRODUCTION

Estimated Annual Production commencing on the Commercial Operation Date with respect to the applicable System under the Agreement shall be as follows:

***Borrego to confirm based on final system design**

Year of Term	Estimated Production (kWh)
1	1,156,190
2	1,150,409
3	1,144,657
4	1,138,934
5	1,133,239
6	1,127,573
7	1,121,935
8	1,116,325
9	1,110,744
10	1,105,190
11	1,099,664
12	1,094,166
13	1,088,695
14	1,083,251
15	1,077,835
16	1,072,446
17	1,067,084
18	1,061,748
19	1,056,440
20	1,051,157

EXHIBIT E
SYSTEM SPECIFICATIONS

System Size: 947kW DC

(3,157) Yingli 300 watt modules (or equivalent)

(2) AE 333 kW inverters (or equivalent)

Ground Mounted Ballasted Panel Claw Racking (or equivalent)

EXHIBIT F

CONSENT AND ASSIGNMENT

CONSENT AND ASSIGNMENT AGREEMENT

CONSENT AND ASSIGNMENT AGREEMENT dated as of _____, 20__, by and among [], a [corporation] organized and existing under the laws of [] (together with its successors, designees and assigns, “Contract Party”), [_____] [], a [] [company] (together with its successors, designees and assigns, the “Bank”), [[], a [] [company] (together with its successors, designees and assigns, the “Investor” and together with the Bank, the “Financing Parties”) and [], a limited liability company organized and existing under the laws of Delaware (“Borrower”).

WHEREAS, the Contract Party and Borrower have entered into the [] Agreement dated as of [_____] (as amended, modified and supplemented and in effect from time to time, the “Assigned Agreement”);

WHEREAS, Borrower has entered into the Loan Agreement dated as of [_____] [], 20[] (as amended, modified and supplemented and in effect from time to time, the “Loan Agreement”; capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement) among Borrower and the Bank; and

WHEREAS, as security for the Obligations, Borrower has entered into (i) the [Collateral Agreement] dated as of [_____] [], 20[] (as amended, modified and supplemented and in effect from time to time, the “Collateral Agreement”) and the (ii) [Security Agreement] dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, and, together with the Collateral Agreement, the “Security Agreements”), pursuant to which Borrower will assign all of its right, title and interest in, to and under the Assigned Agreement to the Bank (the “Security Interest”);

[WHEREAS, Investor has agreed to provide equity financing relating to the Assigned Agreement pursuant to the terms and conditions of the Operating Agreement of [], a [] limited liability company, the sole member of Borrower, dated as of [], 20[], by and between Investor and [], a []

limited liability company (the “Borrower Operating Agreement” and together with the Security Agreements and the Loan Agreement, the “Financing Agreements”).]³

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

CONSENT TO ASSIGNMENT, ETC.

[Financing Parties. Contract Party acknowledges that each of Bank and Investor is a “Financing Party” as defined in the Assigned Agreement and entitled to the benefits thereof in favor of Financing Parties, and that this Consent and Assignment serves as the timely notice identifying Bank and Investor as such pursuant to Exhibit [] of the Assigned Agreement, provided, however, that the Bank shall have exclusive rights as a Financing Party with respect to the Security Interest in the Assigned Agreement and any related assets.]⁴

Consent to Assignment. The Contract Party (a) acknowledges that the Financing Parties have executed the Financing Agreements in reliance, among other things, on the execution and delivery by the Contract Party of the Assigned Agreement and this Consent and Assignment, (b) consents in all respects to the collateral assignment thereunder of all of Borrower’s right, title and interest in, to and under the Assigned Agreement, including, without limitation, all of Borrower’s rights to receive and obligations to make payments under or with respect to the Assigned Agreement, whether as contractual obligations, damages, indemnity payments or otherwise (collectively, the “Assigned Interests”), and (c) acknowledges the right of the Financing Parties or their designee(s) or assignee(s), in the exercise such Financing Party’s rights and remedies under the Financing Agreements, to make all demands, give all notices, take all actions and exercise all rights of Borrower under the Assigned Agreement and consents to any assignment of the Assigned Interests by a Financing Party pursuant to the terms of the Financing Agreements.

Substitute Owner. The Contract Party agrees that (a) if a Financing Party notifies the Contract Party (irrespective of any notice to the contrary received by the Contract Party from any other party) that an Event of Default has occurred and is continuing under the Financing Agreements and that the Financing Parties or their designee(s) or assignee(s) has elected to exercise the rights and remedies set forth in the Financing Agreements, then the Financing Parties, their designee(s) or assignee(s) or any other purchaser of the Assigned Interests in a judicial or non-judicial foreclosure sale (the “Substitute Owner”) shall be substituted for Borrower under the Assigned Agreement; provided that such Substitute Owner shall be financially and technically qualified to operate the Project and perform its obligations

³ Note – include if there is a separate equity investor party.

⁴ Note - include if Assigned Agreement provides for a “Financing Party.” Language may be adjusted based on inclusion of an investor financing party.

under the Assigned Agreement and (b) in such event, the Contract Party will recognize the Substitute Owner and will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the original terms thereof.

Right to Cure. If Borrower defaults in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately, or with the passage of any applicable grace period or the giving of notice, or both, enable the Contract Party to terminate or suspend its performance under the Assigned Agreement (each hereinafter a “default”), the Financing Parties shall have the same Right to Cure as exists in the Assigned Agreement.

No Liability. The Contract Party acknowledges and agrees that neither the Financing Parties nor any of their designee(s) or assignee(s) shall have any liability or obligation under the Assigned Agreement as a result of this Consent and Assignment, nor shall the Financing Parties or any of their designee(s) or assignee(s) be obligated or required to (a) perform any of Borrower’s obligations under the Assigned Agreement, except during any period in which a Financing Party (or its designee(s) or assignee(s)) is a Substitute Owner pursuant to Section 1.3 hereof, in which case the obligations of such Substitute Owner shall be no more than that of Borrower under the Assigned Agreement at the time such Substitute Owner became a Substitute Owner, or (b) take any action to collect or enforce any claim for payment assigned under the Financing Agreements.

Performance under Assigned Agreement. The Contract Party shall perform and comply with all material terms and provisions of the Assigned Agreement to be performed or complied with by it for the benefit of the Financing Parties and shall maintain the Assigned Agreement in full force and effect in accordance with the terms thereof.

Transfer. The Financing Parties shall have the right to assign all or a *pro rata* interest in the Assigned Agreement or a new agreement entered into pursuant to Section 1.6 hereof to a person to whom the Project is transferred, provided that such transferee (i) assumes the obligations of Borrower or the Financing Party, as applicable, under the Assigned Agreement or such new agreement and (ii) satisfies the requirements of a Substitute Owner set forth in Section 1.3 hereof. Upon such assignment, the Borrower or the Financing Party, as the case may be, shall be released from any further liability under the Assigned Agreement or such new agreement to the extent of the interest assigned.

Delivery of Notices. The Contract Party shall deliver to each Financing Party and its designee(s) or assignee(s), concurrently with the delivery thereof to Borrower, a copy of any notice of termination, suspension, default or potential default given by the Contract Party to Borrower pursuant to the Assigned Agreement in accordance with the notice provisions set forth in Section 6.1 hereof.

Access. The Contract Party agrees to provide each Financing Party (and any agents acting on its behalf), upon reasonable notice and during regular business hours, access to its facilities to the extent such facilities are relevant to the performance by the Contract Party of its obligations under the Assigned Agreement.

PAYMENTS UNDER THE ASSIGNED AGREEMENT

Payments. The Contract Party will pay all amounts payable by it under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly into the appropriate account specified on Exhibit A hereto, or to such other person or account as shall be specified from time to time by the Financing Parties to the Contract Party in writing.

No Offset, Etc. All payments required to be made by the Contract Party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than that expressly allowed by the terms of the Assigned Agreement.

REPRESENTATIONS AND WARRANTIES OF THE CONTRACT PARTY

The Contract Party hereby makes the following representations and warranties in favor of the Financing Parties.

Organization. The Contract Party is a corporation or company duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization, and is duly qualified, authorized to do business and in good standing, and has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

Authorization. The execution, delivery and performance by the Contract Party of this Consent and Assignment and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of the Contract Party and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (a) the Contract Party or (b) any other person, except approvals or consents which have previously been obtained and which are in full force and effect.

Execution and Delivery; Binding Agreements. Each of this Consent and Assignment and the Assigned Agreement are in full force and effect, have been duly executed and delivered on behalf of the Contract Party by the appropriate officers of the Contract Party, constitute the legal, valid and binding obligation of the Contract Party, enforceable against the Contract Party in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law) and are admissible in evidence without the need of any filing, registration, notarization or other action (except where registration is required pursuant to Section 3.6).

Litigation. There is no litigation, action, suit, proceeding or investigation pending or (to the best of its knowledge) threatened against the Contract Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (a) could adversely affect the performance by the Contract Party of its obligations hereunder or under the Assigned Agreement, or which could modify or otherwise adversely affect the Approvals (as defined in Section 3.6 hereof), (b) could have a material adverse effect on the condition (financial or otherwise), business or operations of the Contract Party or (c) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

Compliance with Other Instruments, Etc. The Contract Party is not in violation of its formation or governance documents, and the execution, delivery and performance by the Contract Party of this Consent and Assignment and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which

it or its property is bound, or of any license, permit, franchise, judgment, writ, injunction, decree, order, charter, law, ordinance, rule or regulation (to the best of its knowledge) applicable to it.

Approvals. All orders, authorizations, waivers, approvals or any other actions, or registrations, declarations or filings with, any person, board or body, public or private (collectively, the “Approvals”), which are required to be obtained by the Contract Party in connection with the execution, delivery or performance of the Assigned Agreement or the consummation of the transactions contemplated thereunder, have been obtained or will be obtained on or before the date required in the Assigned Agreement.

No Default or Amendment. Neither the Contract Party nor, to the best of its knowledge after due inquiry, any other party to the Assigned Agreement is in default of any of its obligations under any of the Assigned Agreement. The Contract Party and, to the best of its knowledge after due inquiry, each other party to the Assigned Agreement has complied with all conditions precedent to the respective obligations of such party to perform under the Assigned Agreement. No event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Contract Party or Borrower to terminate or suspend its obligations under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner.

No Previous Assignments. The Contract Party has no notice of, and has not consented to, any previous assignment by Borrower of all or any part of its rights under the Assigned Agreement.

Assigned Agreement in Effect. The Assigned Agreement is in full force and effect; there are no other amendments, modifications, supplements, waivers, promises, agreements, understandings or commitments between Contract Party and Borrower relating to the subject of the Assigned Agreement; and no party to the Assigned Agreement has given any notice of termination thereunder.

Representations and Warranties. All representations, warranties and other statements made by the Contract Party to Borrower in the Assigned Agreement were true and correct as of the date when made and are true and correct as of the date of this Consent and Assignment.

INFORMATION REQUIRED UNDER THE LOAN AGREEMENT

In connection with each invoice submitted to Borrower under the Assigned Agreement, the Contract Party agrees to provide Borrower with all documents and information relating to such invoice as Borrower is reasonably required to provide to obtain financing (whether by reimbursement or otherwise) under and pursuant to the Loan Agreement.

MISCELLANEOUS

Notices. All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall refer on their face to the relevant Assigned Agreement (although failure to so refer shall not render any such notice of communication ineffective), shall be sent by first class mail, by personal delivery or by an internationally recognized courier service, and shall be directed (a) if to the Contract Party or if to Borrower, in accordance with the terms of the Assigned Agreement, and (b) if to the Financing Parties, to the intended recipient at the address for each Financing Party set forth on Exhibit B hereto and (e) to such other address or addressee as any such party may designate by notice given pursuant hereto.

Governing Law; Submission to Jurisdiction; etc.

(a) THIS CONSENT AND ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW HAMPSHIRE.

(b) Any legal action or proceeding with respect to this Consent and Assignment and any action for enforcement of any judgment in respect thereof shall be brought in the State courts of the State of New Hampshire, and, by execution and delivery of this Consent and Assignment, the Financing Parties and the Contracting Party hereby accepts for themselves and in respect of their property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof.⁵

(c) To the extent that the Contract Party has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution, sovereign immunity or otherwise) with respect to itself or its property, it hereby irrevocably waives such immunity in respect of its obligations under this Consent and Assignment and the Assigned Agreement.

(d) TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE CONTRACT PARTY, BORROWER AND THE FINANCING PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT AND ASSIGNMENT OR ANY MATTER ARISING HEREUNDER.

Counterparts. This Consent and Assignment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

Headings Descriptive. The headings of the several sections and subsections of this Consent and Assignment are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent and Assignment.

Severability. In case any provision in or obligation under this Consent and Assignment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

⁵ Law and jurisdiction will match Assigned Agreement.

Amendment, Waiver. Neither this Consent and Assignment nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Contract Party, the Borrower and the Financing Parties.

Termination. The obligations of the Contract Party hereunder are absolute and unconditional, and the Contract Party has no right, and shall have no right, to terminate this Consent and Assignment or to be released, relieved or discharged from any obligation or liability hereunder until all of the Obligations shall have been indefeasibly paid in full in cash.

Successors and Assigns. This Consent and Assignment shall be binding upon the Contract Party and its permitted successors and assigns and shall inure to the benefit of each Financing Party, its designee(s) and assignee(s) and its successors and assigns.

Further Assurances. The Contract Party hereby agrees to execute and deliver all such instruments and take all such action as may be necessary to effectuate fully the purposes of this Consent and Assignment.

Entire Agreement. This Consent and Assignment and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and Assignment and any such agreement, document or instrument, the terms, conditions and provisions of this Consent and Assignment shall prevail.

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Assignment to be duly executed and delivered by their duly authorized officers as of the date first above written.

[CONTRACT PARTY]

By: _____

Name:

Title:

Accepted and Agreed:

[_____],

as Bank

By: _____

Name:

Title:

[_____],

as Investor

By: _____

Name:

Title:

[_____],

as Borrower

By:_____

Name:

Title:

Exhibit A to
Consent and Assignment

[INSERT PAYMENT INSTRUCTIONS]

Notices

If to Bank:

[]

[]

[]

Fax: []

Email: []

Attention: []

with copy to (which shall not constitute notice or service of process)

[]

[]

[]

Fax: []

Email: []

Attention: []

If to Investor:

[]

[]

[]

Fax: []

Email: []

Attention: []

with copy to (which shall not constitute notice or service of process)

[]

[]

[]

Fax: []

Email: []

Attention: []

EXHIBIT G

RENEWAL TERM VALUES

<u>Year 21</u>	\$0.0976 w/ a 1% annual escalator
<u>Year 26</u>	\$0.1026 w/ a 1% annual escalator

EXHIBIT H

PRICE ADJUSTMENT FOR CERTAIN GOVERNMENTAL CHARGE

As is provided for in Section 8.2, Seller shall be responsible for taxes and fees assessed against it due to its ownership of the System. The parties acknowledge that the real and personal property taxes assessable for the Premises and the System were not fully known at the time Seller proposed the kWh Rate. It was assumed that there would not be such tax assessments, or that such tax assessments would be a de minimus sum, as the kWh Rate proposed by Seller and accepted by Buyer was intended by Seller to account for all costs to Seller, including all real and personal tax assessments on the Premises and the System. The parties have agreed that the 2015 real and personal property tax assessment on the Premises and the System shall be an assessment that shall yield a tax payment obligation of \$4,000.00 per annum, and that such tax payment obligation shall thereafter be an assessment that equals a tax payment obligation of \$4,000 per annum, adjusted by a per annum increase of 2% for a period of 20 years.

Accordingly, any real or personal property taxes assessed by the Buyer with respect to the Premises and the System in a Contract Year, that exceed the sum of \$4,000.00 plus the cumulative effective of the 2% per annum increase adjustment, shall be paid in a timely manner by the Seller, and recovered, without any markup whatsoever, by Seller through a monthly surcharge (the "Property Tax Surcharge") with respect to Electricity delivered to the LEU Meter in the following Contract Year. In the event any penalties, costs, expenses, or additional charges are incurred by or imposed upon the Seller as a result of Seller's failure to timely pay all such taxes, such penalties, etc. shall be paid solely by the Seller, and shall not be included in the Property Tax Surcharge.

For example, the Property Tax Surcharge for the 2018 Contract Year would be calculated as follows:

Assume 2015 property tax of \$4,000, and 2016 property tax of \$4,080 (the \$80 reflects 2% annual increase). In 2017, with the 2% increase over the 2016 property tax of \$4,080, the assessment should be \$4,121.60. If the Buyer imposes a property tax assessment that yields a 2017 property tax of \$16,121.60, then the exceedance in 2017 would be \$12,000. This \$12,000 exceedance would be recoverable in 2018 by dividing the prior year's exceedance of \$12,000 by 12 months, yielding a monthly surcharge of \$1,000 per month.