

6:00PM Executive Session

20-31- Consideration and any appropriate action to enter into executive session pursuant to 1. M.R.S.A. § 405 (6) (E) for consultation with legal counsel.

6:30PM Board of Selectmen Meeting Virtual Meeting (TV Ch. 3) May 21, 2020

Pledge of Allegiance –

Roll Call of Board Members –

Town Manager's Report –

Board and Committee Reports and Updates-

Correspondence – If you have any comments/questions on an agenda topic, email them to info@topshammaine.com by Tuesday, May 19th. Please include your full name and address in the email. Emails will be reviewed and addressed during the meeting which will be televised on channel 3.

Adjustments to the Agenda – At this time we will be taking phone calls for any comments/question you have on this agenda at 373-5090. We will be asking for you name, address and brief comment/question.

Consent Calendar –

1. Approval of the minutes of the Regular Selectmen meeting May 7, 2020.

Public Hearing –

20-25-Consideration and any appropriate action on an application for a Special Amusement permit for Duck Pub.

Unfinished Business –

Old Business –

New Business –

20-32- Consideration and any appropriate action regarding revised version of ReVision remote-sited municipal solar PPA contract.

20-33- Consideration and any appropriate action on to discuss temporary signage during the current COVID-19 pandemic.

Executive Session-

20-34-Consideration and any appropriate action to enter into executive session pursuant to 1. M.R.S.A. § 405 (6) (A) to discuss a grievance matter.

Any public member desiring to address the Board shall be recognized by the Chair, shall state name and address for the record, and shall limit remarks to the question under discussion. All remarks and questions addressed to the administration of Town shall be addressed to the Town Manager or the Board of Municipal Officers through the Chair and not to any municipal town employee. No person other than members of the Board and the person having the floor shall enter into any discussion either directly or through a member of the Board without the permission of the presiding officer.

Public members attending Board Meetings also shall observe the same rules of propriety, decorum, and good conduct applicable to the members of the Board. Any person making personal impertinent and slanderous remarks, or who becomes boisterous while addressing the Board or those attending the Board meeting shall be removed from the room if so directed by the presiding officer. Aggravated cases shall be prosecuted on appropriate complaint signed by the presiding officer. In case the presiding officer should fail to act, any member of the Board may move to require the Chair to act to enforce the rules, and the affirmative vote of the Board shall require the presiding officer to act. 05/29/2003

Board of Selectmen Meeting

For the date of: 05/21/2020

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number: _____

(If this is Unfinished Business, please remember to research and enter the original agenda number above. For Regular Agenda items, the Secretary will assign a number.)

Brief Title of consent or Agenda Item: Consideration and any appropriate action to enter into executive session pursuant to 1. M.R.S.A. § 405 (6) (E) to consult with legal counsel.

Brief Description of Consent or Agenda Item:

Submitted by: Derek Scrapchansky, Town Manager **Date:** 05/13/2020

Board of Selectmen Meeting

For the date of: 05/21/2020

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- Old Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number 1

(If this is unfinished business, please remember to research and enter the original agenda number above. For regular agenda items, the secretary will assign a number.)

Brief Title of consent or Agenda Item: Approval of the minutes of the Regular Selectmen meeting May 7, 2020.

Brief Description of Consent or Agenda Item: see attached

Submitted by Derek Scrapchansky, Town Manager

Date: 05/12/2020

MINUTES
TOWN OF TOPSHAM
BOARD OF SELECTMEN MEETING
VIRTUAL MEETING VIA ZOOM (TV CH 3)
MAY 7, 2020 – 6:30 P.M

MEMBERS ON LINE: David Douglass
Marie Brilliant
Ruth Lyons
Matt Nixon
Roland Tufts

MEMBER(S) ABSENT: All present

STAFF ON LINE: Town Manager, Derek Scrapchansky; Acting Town Clerk, Tyler Washburn; Economic Community Development Director, John Shattuck.

A meeting of the Topsham Board of Selectmen was held on Thursday, May 7, 2020 via Zoom.

CALL TO ORDER

Chairman David Douglass called the regular meeting to order at 6:30 p.m.

PLEDGE OF ALLEGIANCE/ROLL CALL

Everyone was invited to stand and recite the Pledge of Allegiance to the Flag. The recording secretary took the roll call and noted that all members were present.

TOWN MANAGER'S REPORT

Good evening,

The Maine Department of Transportation has started pavement work and making safety improvements on Route 196 in Topsham, Lisbon, and Lewiston. Drivers should expect daytime lane closures, but between the hours of 3:00 p.m. and 6:00 p.m. there will be two-way traffic. MDOT expects the project will be completed by September 7th.

Despite the challenging issues associated with COVID19, we remain dedicated and continue to provide service to our community. Our Public Works, Solid Waste, Fire/EMS, and Police departments have done an outstanding job while adjusting to increased safety measures.

We have remained consistent in following State and CDC guidelines to ensure it is understood by our community. Our Public safety departments have been monitoring and communicating with residents and businesses to assist in educating and providing a safe environment while

continuing to respond to emergencies. Our Public Works Department has been working hard and transitioned from winter to summer duties. Some of their current projects include the Main Street culvert replacement and the removal of the concrete area on Main Street near Elm Street extension. Our Solid Waste Department has also implemented new safety measures and has experienced increased waste disposal during the last couple of months. Given the circumstances, these departments are doing well and extend their thanks to the community for its support.

Although our Town Hall has been closed to in-person transactions since mid-March, we have continued to serve the public via on-line services, email, phone, and virtual meetings. As restrictions are lifted, we will open the doors to Town Hall. We are currently in the process of installing a glass partition on the Tax/Clerk counter which will provide additional safety for the public and our employees. We are anticipating opening our Tax/Clerk office for in-person transactions on June 1st. This will be by appointment only until further notice as we adhere to safe practices. Expect to be able to make appointments beginning May 18th. Please visit the Town Website or call the Tax/Clerk office for instructions which will be posted next week..

The Economic and Community Development department remains active and open for enquiries. Please contact ECD director John Shattuck at -jshattuck@topshammaine.com. The Town boards and committees that John staffs, including TDI and the Government Review Committee, continue to meet, though meetings are currently via remote. John continues to represent the Town at recurring remote meetings devoted to COVID19 issues and resources hosted by: DECD, Maine's Federal delegation, the Southern Midcoast Maine Chamber and others. John commends the efforts of the Chamber's board and its executive director, Cory King, for its strong leadership in providing information about COVID19 resources for businesses and in coordinating business input on reopening plans. John's update this evening will include details on some of the Department's current projects.

The Planning department has continued to meet with boards and committees and applicants have not been delayed in reviews for planning or codes. Multi-department development review meetings continue to occur, and the virtual meeting format has been working well, particularly with screen sharing capabilities. State agency virtual meetings have also been successful and continue to occur.

Our Assessor would like to remind everyone that property record cards are available online at vg.si.com and are updated monthly. Voicemails and emails for more detailed questions are being responded to within 24 hours during the weekdays.

Our Parks and Recreation Department has removed all caution tape and restrictive barriers to Parks and Recreation Facilities on May 1st. This includes: Foreside Recreational Area (Hillside/Foreside/Riverside Fields), Head of Tide Park, and Mountain Biking Trails and fishing ponds at Solid Waste Facilities. Please note the Foreside Playground remains closed until further notice. All ordinances regarding the use of these Facilities are in effect. This includes all facilities closing at dusk.

The following guidelines apply when using the facilities and parks.

- Do not use parks or trails if you or any of your family members are exhibiting symptoms of an illness.
- Follow the CDC's guidance on personal hygiene prior to visiting.

- Practice social distancing.
- The governor's order regarding the use of face masks in public where social distancing is not possible, are required.
- Be prepared for no access to public restrooms or water fountains.
- Use our spaces using distances advised, i.e.: a family shooting hoops would be acceptable, a group of individuals in a full court contact game would not.
- Share Trails and warn other trail users of your presence as you approach.
- Follow Leash laws with pets and pick up excrements.
- Do not leave any trash behind.

Lastly, I would like to thank Lois Skillings, President & CEO, and Dr. Christopher Bowe, Vice President & Chief Medical Officer of MidCoast-Parkview Health for attending this meeting to provide an update.

Thank you and have a good night.

There were no questions from the Board following the Town Manager's presentation.

BOARD AND COMMITTEE REPORTS AND UPDATES

UPDATE - TDI/ECD – JOHN SHATTUCK, TOPSHAM ECONOMIC AND COMMUNITY DEVELOPMENT, INC. DIRECTOR

ECD Update – Mr. Shattuck presented an update on EDC, including:

Business Retention, Expansion and Attraction (BREA)

Wicked Joe, LLC CDBG application

- Participated in April 16th Selectmen's meeting regarding setting of a public hearing on the grant application
- Public Hearing will be held at Selectmen's meeting this Thursday, May 7th.

Proposed Main Street-Route 196 Corner project

- Several Town committees have submitted statements opposing this project on the ground that it conflicts with the newly adopted 2019 Comprehensive Plan and does not meet the requirement of Town code for a conditional use permit, including:
 - § Comprehensive Plan Implementation Committee,
 - § Topsham Conservation Commission
 - § Topsham Development, Inc.

Topsham ReVision Municipal Solar Project

Together with The Town Manager, I have had extended correspondence, calls and video meetings with Kevin Decker of Bernstein Shur regarding the negotiation of the final terms of ReVision's proposed municipal solar PPA contract, as directed by the Selectmen at their April 16th meeting.

Within the next week, we expect to receive a proposed final contract from Bernstein Shur, along with Kevin Decker's comments on the impacts of the revised terms.

TOPSHAM DEVELOPMENT – TDI

TDI Board of Directors met remotely on Wednesday, April 22, 2020 and discussed a variety of issues:

- Ongoing strategic update process
- Possible TDI actions to support Topsham's C19 response/recovery
- Progress on expansion of Mountain Road water infrastructure supported by TDI funding.

Government Review Committee (GRC)

- After skipping its April meeting until C-19 issues and timelines became clearer, the Government Review Committee will resume its regular monthly meetings on Wednesday, May 13, 2020.

Cathance River Education Alliance (CREA)

- CREA is also preparing for its move to new office location that will also house the Brunswick Topsham Land Trust.
- Both organizations anticipate that this co-location will save both organizations rental expense while provide additional efficiencies through increased opportunities for collaboration in providing programming.

MidCoast Economic Development District (MCEDD)

- I am working with MCEDD to determine if Topsham may be eligible for supplemental CDBG funding provided to the states under the CARES Act to provide additional small business support for small businesses.

UPDATE FROM MID COAST HOSPITAL

Lois Skillings, President and CEO of MidCoast-Parkview Health and Christopher Bowe, MD, Vice President, Medical Administrator and Chief Medical Officer, gave an update on the Covid-19 Pandemic. They brought with them a Power Point presentation which was left with the Town Manager and is available to anyone who would like to view it.

CORRESPONDENCE – **Notice given to residents:** (*"If anyone has any comments/questions on an agenda topic, email them to info@topshammaine.com by Tuesday, May 5. Please include your full name and address in the email. Emails will be reviewed and addressed during the meeting which will be televised on Channel 3."*)

Chairman Douglass gave the phone number and instructions to anyone joining the Zoom meeting to call in with questions or concerns at 373-5090. The Board waited for several minutes, but there was no response from anyone wishing to comment.

Question was asked if any action should be taken regarding the several signs posted on businesses such as “Now Open for Business” and other signs put up temporarily due to the Covid -19 pandemic. This type of sign is illegal according to the ordinance. Following discussion, no action was taken as several legal pauses are a result of the pandemic.

ADJUSTMENTS TO THE AGENDA

Motion was made by Chairman Douglass, seconded by Selectman Nixon, to add agenda item **20-30 CONSIDERATION AND ANY APPROPRIATE ACTION TO MOVE INTO EXECUTIVE SESSION PURSUANT TO SUBSECTION M.R.S.A.405. 6-A TO DISCUSS PERSONNEL MATTERS**

Vote was called and the motion passed with a **unanimous vote in favor.**

CONSENT CALENDAR

1. Approval of the minutes of the Regular Selectmen meeting of April 16, 2020.

Motion was made by Chairman Douglass, seconded by Selectman Nixon, to approve the minutes of the April 16, 2020 meeting as written.

Vote was called and the motion passed with a **unanimously vote in favor.**

PUBLIC HEARING

20-24 CONSIDERATION AND ANY APPROPRIATE ACTION REGARDING WHETHER THE TOWN SHALL APPROVE AN APPLICATION FOR CDBG-EDP GRANT TO WICKED JOE, LLC, IN THE AMOUNT OF \$500,000 FOR PLACEMENT ON THE TOWN MEETING WARRANT

Chairman Douglass explained how residents can call in with their questions/concerns and repeated the number to call. The Public Hearing was declared open.

John Shattuck, Economic and Community Development, Inc. Director, presented background on Wicked Joe, LLC, and how they were in good standing with the original grant they received for their business. A copy of the Indemnification Agreement, which has been reviewed and approved by the Town Attorney was included in the Board package for their review.

Chairman Douglass expressed concern that the June Town Meeting would have to be postponed to perhaps September and asked how that would affect the application. (Town meeting had to be postponed due to the Covid-19 Pandemic.) Mr. Shattuck said that Deborah Johnson from DECD indicated that, due to the circumstances, they will make accommodations for the Town to submit the final application for Town Meeting approval when it occurs with no penalty applied. Selectman Nixon said he would like to see Ms. Johnson’s statement in writing.

Chairman Douglass asked for comments from members of the public. There was no response so the Public Hearing was declared closed.

During Board discussion, Board members were polled and had no questions and were all in favor of moving the application before the upcoming Town Meeting.

Motion was made by Chairman Douglass, seconded by Selectman Tufts, to approve the application for CDBG and EDP Grant for Wicked Joe, LLC for \$500,000 with placement on the Town Meeting Warrant with a recommendation of "Ought to Pass" from the Board of Selectman.

20-25 CONSIDERATION AND ANY APPROPRIATE ACTION ON AN APPLICATION FOR A SPECIAL AMUSEMENT PERMIT FOR SANDBEGGERS GOLF, LLC AT DUCK PUB

The applicant was not present at the meeting. Chairman Douglass continued on with the agenda giving the applicant time to tune into the meeting.

Not having heard from the applicant when the meeting was about to conclude, motion was made and seconded to Table Item 20-25 to the May 21, 2020 meeting of the Board. Vote was called and the **motion passed unanimously**.

UNFINISHED BUSINESS – None noted.

OLD BUSINESS – None noted.

NEW BUSINESS

20-26 CONSIDERATION AND ANY APPROPRIATE ACTION TO CANCEL TOWN MEETING DATE OF JUNE 17, 2020 TO A DATE TO BE DETERMINED. THIS IS BASED ON GOVERNOR MILLS PLAN TO RESTART THE ECONOMY WHICH LIMITS GATHERINGS TO LESS THAN 50 PEOPLE DURING THE MONTH OF JUNE

Chairman Douglass said the Governor's plan to limit gatherings to 50 people or less during the month of July has been extended through the month of August, as it stands today. However, she is constantly reevaluating the plan. This means the Town will be through 2 months of the annual budget. He said the Town will have to move forward under the continued resolution of last year's budget, under last years guidelines, and all that pertains. Until a Town Meeting can be held, there will be no pay raises, or no additional projects to take place. Anything that has been worked on over the last several months on the budget for the next fiscal year disappears. We do have the ability to do this on a ballot. The next ballot could be July 14 through mail in. He said he has great reservations to put this budget to a simple yes or no at the ballot box. We all know the hours and months of work the staff and Finance Committee goes through. Not being able to have a discussion at Town Meeting is dangerous. All it takes is a "no" vote under some department, or all departments, and the doors are locked up the following morning until we can get a budget passed.

Selectman Lyons said she is not in favor of voting the budget by ballot as the Chairman said. She said people should have an opportunity to speak. Selectman Tufts agreed and said there could be questions that people have that need to be answered and for now we need to stay the course.

Selectmen Nixon said it is not wise to make a definitive decision whether or not we will be doing ballots until the Governor makes a final decision. He added he is 100% in agreement with Chairman Douglass' comments. Things are changing almost every single day so we should wait and see what happens. Selectman Brilliant agreed with the comments made.

Chairman Douglass added that the Public Hearing on the Warrant is scheduled for May 21, 2020 and asked if it made sense to hold the Public Hearing when there is the reality we may be 3 months to a Town Meeting meeting date. He asked for the opinion of Board members. The Board was in unanimous agreement to hold off on the Public Hearing.

Motion was made by Chairman Douglass, seconded by Selectman Lyons, to cancel the June 17, 2020 Town Meeting date to a date to be determined.

Vote was called and the Board voted unanimously in favor, so **the motion passed.**

20-27 CONSIDERATION AND ANY APPROPRIATE ACTION TO DISCUSS WAVING THE PROPERTY TAX INTEREST PENALTY UNTIL JUNE 30, 2020 FOR APRIL 2020 TAXES AND APPROVAL FOR PLACEMENT ON THE TOWN MEETING WARRANT

Chairman Douglass said Town Meeting sets the date for the taxes to be due and the interest to be applied to late taxes. He said he didn't know what date would be appropriate and would like to take this to Town Meeting. He asked how the Board wanted to proceed.

Question was asked if this was a one-time thing. Response was yes. The Towns' good tax collection rate was noted, but flexibility would be favorable. Selectman Lyons said we should prepare for October as we don't know about layoffs, closing of businesses, etc. If things continue on the downslide it is a good thing for the Town to consider this and show how much we care. She mentioned that a lot of taxes come to the Town from mortgage companies.

With all comments having been heard, motion was made by Chairman Douglass, seconded by Selectman Lyons to table Item 20-27.

Vote was called and **the motion passed unanimously.**

20-28 CONSIDERATION AND ANY APPROPRIATE ACTION TO DISCUSS ADDING AN ARTICLE TO THE TOWN MEETING WARRANT THAT ALLOWS THE BOARD OF SELECTMEN TO WAIVE INTEREST PENALTIES ON PROPERTY TAXES DURING A DECLARED STATE OF EMERGENCY BY THE TOWN AND APPROVAL FOR PLACEMENT ON THE TOWN MEETING WARRANT

Chairman Douglass said what we just tried to do was have the legislative body be able to waive interest during a declared state of emergency. He suggested putting forward to allow the Board of Selectman to waive interest penalties with a 2/3 majority. The vote would take 4 out of 5 to be a majority. He added, if we go to the people and show a high bar, given the recent episode, he feels that they would be receptive.

Selectman Tufts said he would expect anyone asking for a waiver to provide justification for the waiver to be sure there is truly a need. Selectmen Nixon said, given the bar proposed, we could get by with a blanket in this case. We probably will never find ourselves in a situation like the

one we are in right now. Selectman Lyons said it should have a beginning and an end. What if it goes on for two years? She asked how much money we are really talking. It is more of a “feel good” gesture from the Town. How many taxes are being paid by mortgage companies? Do we need to know the percentage of homes that are mortgaged?

With no more comments to be heard, motion was made by Chairman Douglass, seconded by selectman Nixon, to add an article to the Town Meeting Warrant that allows the Board of Selectmen, by a two-thirds majority, to waive the interest penalty on property taxes for up to six months beyond the due date during a declared state of emergency within the past six months.

Vote was called and **the motion was passed unanimously.**

20-29 CONSIDERATION AND ANY APPROPRIATE ACTION ON APPROVING THE ORDINANCE CHANGES TO CHAPTER 161. PARKS AND RECREATION 161-4 RULES AND REGULATIONS FOR PLACEMENT ON THE TOWN MEETING WARRANT

Ed Caron spoke to this item saying the Topsham Parks and Recreation Department, in cooperation with the Solid Waste Facility is requesting that the following ordinance changes be adopted. This change will enable the ponds (Little Eddy and Big Eddy) to be available to the free supply from Maine State Hatcheries through the Inland Fish and Wildlife Department.

Chapter 161. Parks and Recreation

161-4 Rules and Regulations

19. Open water fishing *and Ice Fishing* ~~from the banks of ponds at the Solid Waste Facility~~ is allowed *with proper Maine License and adherent to Maine State Law*. Observance of the ponds use times must be observed. ~~No ice skating, commercial bait fishing or ice fishing is allowed.~~

(Items to be deleted have been struck out and items to add are underlined and italicized.)

Following Mr. Caron’s presentation, motion was made by Chairman Douglass, seconded by Selectman Tufts, to forward this proposed ordinance amendment to Chapter 161. Parks and Recreation, with the memo provided to the Town Manager dated April 23, 2020, for placement on the Town Warrant at the next Town Meeting.

At 7:55 p.m. motion was made, seconded, and it was unanimously voted to move into Executive Session.

EXECUTIVE SESSION

20-30 CONSIDERATION AND ANY APPROPRIATE ACTION TO MOVE INTO EXECUTIVE SESSION PURSUANT TO M.R.S.A. §405, (6) (A) TO DISCUSS PERSONNEL MATTERS

At 8:45 p.m., motion was made by Chairman Douglass, seconded by Selectman Nixon, and it was unanimously voted to come out of Executive Session and to return to the regular Board meeting.

No action was taken as a result of the Executive Session.

ADJOURN

Motion was made by Chairman Douglass, seconded by Selectman Brilliant, and it was unanimously

^VOTED

To adjourn the meeting at 8:46 p.m.

Respectfully submitted,

Patty Williams, Recording Secretary

Board of Selectmen Meeting

For the date of: 05/21/2020

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number: 20-25

(If this is Unfinished Business, please remember to research and enter the original agenda number above. For Regular Agenda items, the Secretary will assign a number.)

Brief Title of consent or Agenda Item: Consideration and any appropriate action on an application for a Special Amusement permit for Duck Pub.

Brief Description of Consent or Agenda Item: This is a renewal application

Submitted by: Tyler Washburn, Interim Town Clerk

Date: 05-11-2020



TOWN OF TOPSHAM

Town Clerk's Office
100 Main Street, 04086
ldumont@topshammaine.com
(207)725-1719 Fax: 725-1733

APPLICATION FOR LICENSE OR PERMIT

Please complete:

Type of Business:

Partnership- Partner's Names: _____
 Corporation- Corporation Name Sandbaggers Golf LLC
Incorporation Date: 01/17 Incorporation State ME

Type of License Special Amusement

New License: Opening Date _____ Renewal

Business Name: Sandbaggers Golf LLC E-Mail: Sean@resurrectiongolf.com

Business Address: 114 V. Hays Dr. The Duck Pub Business Phone Number (207) 939-8626

Name of Contact Person: Sean McLaughlin Contact's Phone Number (207) 939-8626

Mailing Address for Correspondence: 18 Pleasant St. Suite 106 Brunswick, ME

Signature of Applicant: [Signature] Date: 3/12/19

Any information provided in this application, which is found to be false will result in denial or revocation of this license-
Per 1 M.R.S.A.17-A5 453

SELECT TYPE OF LICENSE YOU ARE APPLYING FOR ON BACK OF THIS PAGE

Corporations Please Complete:

Address of Incorporation: 18 Pleasant St. Brunswick, ME Phone#: (207) 939-8626

Name of Corp. Officer, Owner, or Partners:	Title	Address	% of Stock ownership
<u>Kevin McLaughlin</u>	<u>President</u>	<u>Atlanta, GA</u>	<u>100%</u>
<u>Sean McLaughlin</u>	<u>VP</u>	<u>Woolwich, ME</u>	<u>0%</u>

Office Use Only (Make copy of signed State application for office file)

Type of License: Special Amus Permit Fee \$ _____ Paid Advertising Fee \$ _____ Paid

For Peddler-Police Chief sign off required: _____

Required Approvals for Special Amusement and new Liquor license: BOS _____ Fire Police

Public Hearing Posted Public Notice Dates Copy of current State liquor license _____

Town Clerk Signature [Signature]

Complete back

License Fees & Schedule: Please check the type of license you are applying for

Catering Privileges Off - Premises (Title 28-A§1052) (events which involve liquor) holders of current state liquor license
*Requires Town Clerk's sign off & approval of FC, PC CEO (Attach approval to office copy application)
No Town fee

Entertainment/Dancing \$50 + 3 day Public Hearing advertising fee

Special Amusements (Title 28-A§1054) Expires annually with liquor license, must provide copy of current state certificate with renewal application
Requires annual Public Hearing
* Include supplemental pages 3 &4
*Describe in detail the type and nature of entertainment, the room or rooms to be used
*Provide a diagram of room to be used

Victualer (Food Service Establishment to include Bed and Breakfast) Expires May 31st

Describe food to be sold Full Service Restaurant and pub food, to include catering + delivery

FSE with- out Liquor **\$50** Copy of State Certificate required
 FSE with Liquor (Title 28-A§652) **\$100** Copy of State Certificate required (requires Public Hearing on new applications)
 FSE Outside Liquor Service Extension of Premise
(deck, lawn) Municipal approval required - submitted in writing to Bureau of Liquor Enforcement
Describe food to be sold _____

Peddler (The selling of tangible commodities having no established or fixed place of business in Topsham)
\$25 Resident \$50 Non-Resident \$25 - # ___ of months (up to 3 months \$25)

Description of nature of business and goods to be sold _____
Name and address of employer and evidence of employment _____
Vehicle Description: Make _____ Model _____ Year _____ Color _____ License plate # _____
Photo of applicant taken with- in 60 days of application
Description of location if stationary and letter of agreement from owner of record
Names of two reliable property owners, references, or other evidence of good character
A statement of whether the applicant has been convicted of any crime, misdemeanor or violation of any municipal ordinance, nature of the offense, punishment or penalty assessed

Taxicabs/Vehicles for Hire 30A- §3009(1) (F) \$50 per vehicle Expires April 1st each year.

Number of Taxicabs for which license is desired _____

Taxicab Driver \$25 annually

SUPPLEMENTAL APPLICATION IS REQUIRED

***Supplemental page for Special Amusement Permit**

Describe in detail the type and nature of entertainment:

Indoor/Outdoor - Live music and entertainment, craft fairs,
parties, group functions, seasonal events, Karaoke, open mic
nights, Private Golf outings.

Describe in detail the room or rooms to be used under this license:

Outside Patio + Seating area, outdoor veranda and stage
w/ Seating upstairs dining room and private function room.
Downstairs pub + dining golf course

DIAGRAM

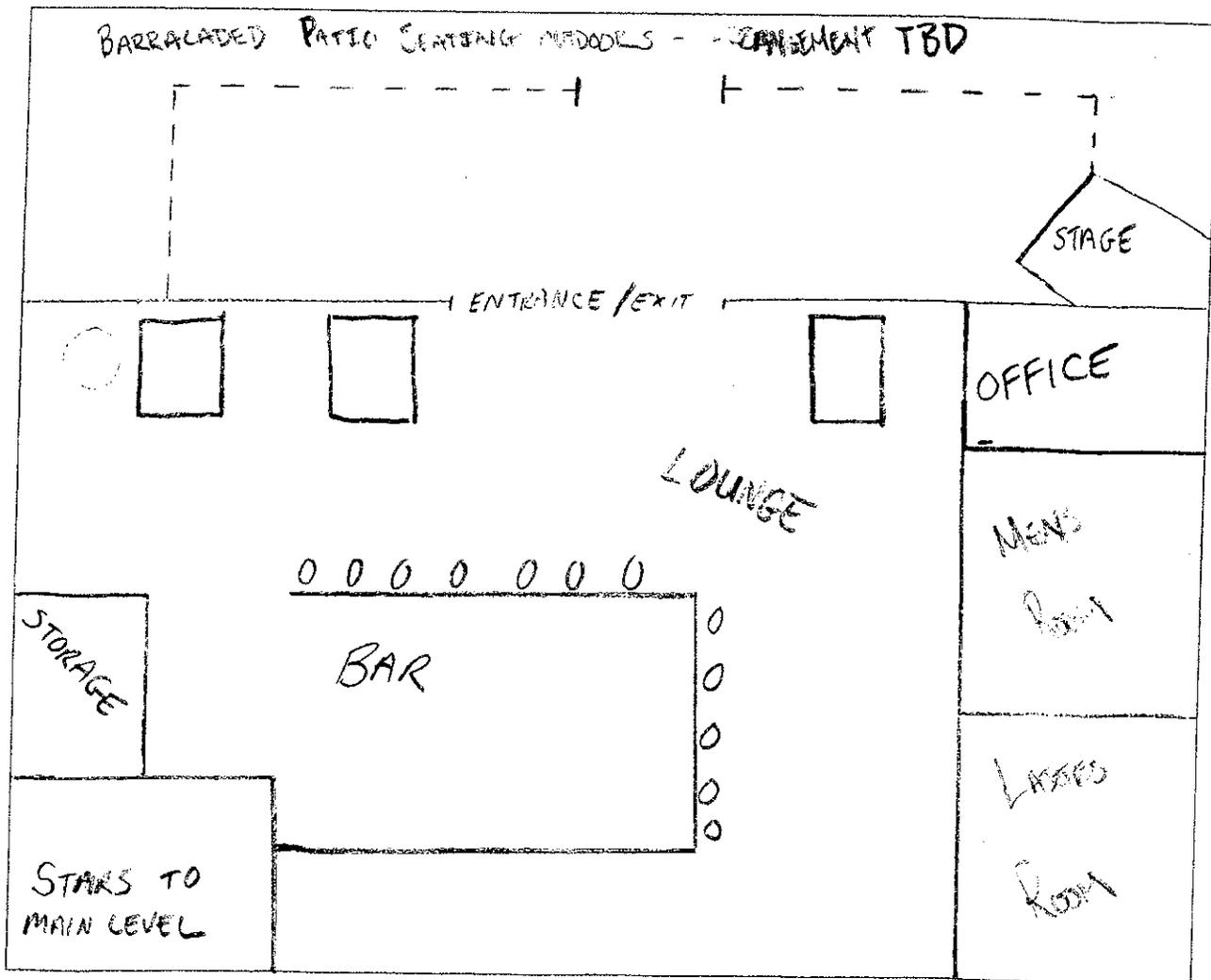
Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing & Enforcement
8 State House Station, Augusta, ME 04333-0008
10 Water Street, Hallowell, ME 04347
Tel: (207) 624-7220 Fax: (207) 287-3434
Email Inquiries: MaineLiquor@maine.gov

DIVISION USE ONLY	
<input type="checkbox"/>	Approved
<input type="checkbox"/>	Not Approved
BY:	

ON PREMISE DIAGRAM

In an effort to clearly define your license premise and the area that consumption and storage of liquor is allowed. The Division requires all applicants to submit a diagram of the premise to be licensed in addition to a completed license application.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, dining rooms, lounges, function rooms, restrooms, decks and all areas that you are requesting approval from the Division for liquor consumption.



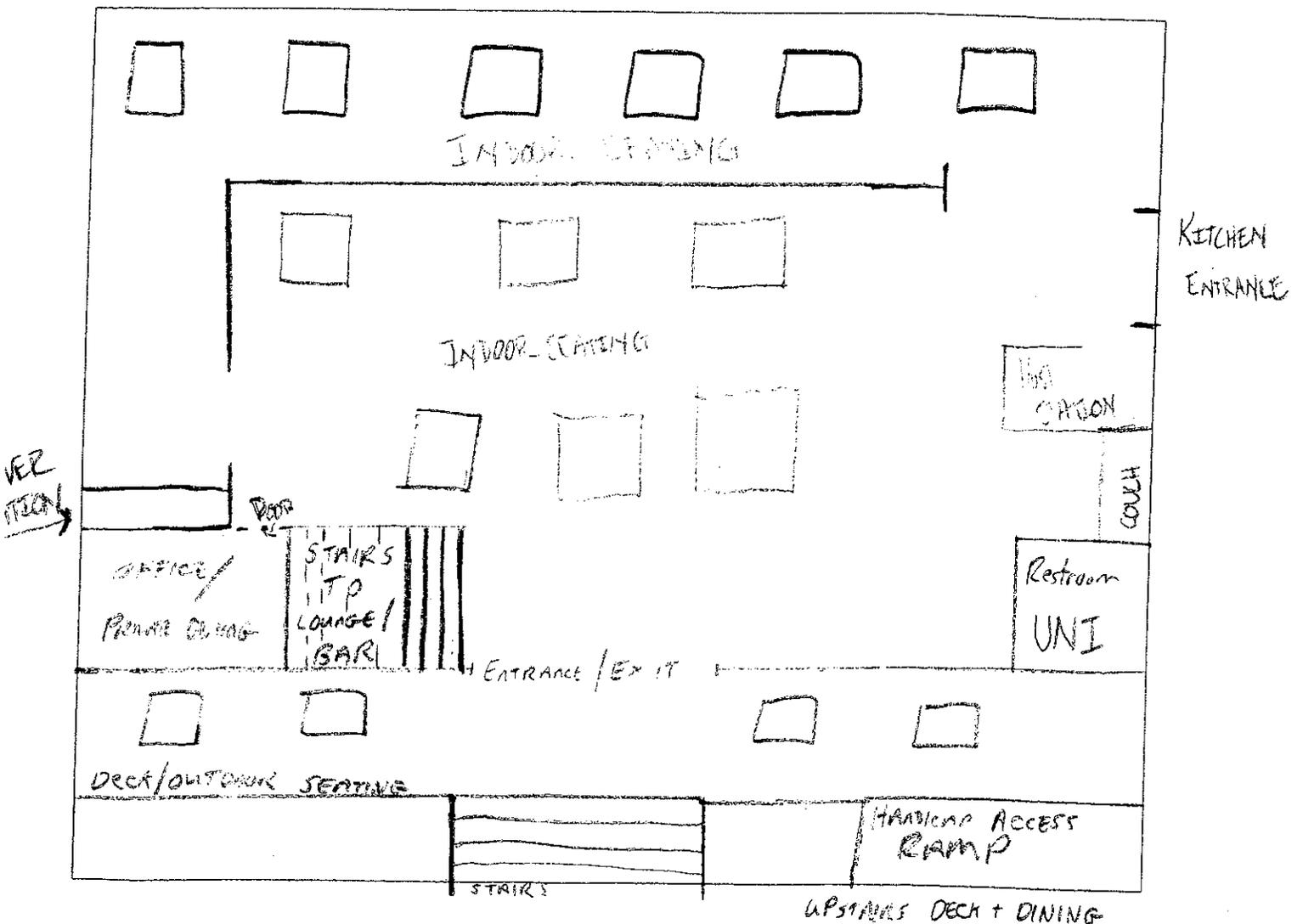
Bureau of Alcoholic Beverages and Lottery Operations
 Division of Liquor Licensing & Enforcement
 8 State House Station, Augusta, ME 04333-0008
 10 Water Street, Hallowell, ME 04347
 Tel: (207) 624-7220 Fax: (207) 287-3434
 Email Inquiries: MaineLiquor@maine.gov

DIVISION USE ONLY	
<input type="checkbox"/>	Approved
<input type="checkbox"/>	Not Approved
BY:	

ON PREMISE DIAGRAM

In an effort to clearly define your license premise and the area that consumption and storage of liquor is allowed. The Division requires all applicants to submit a diagram of the premise to be licensed in addition to a completed license application.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the areas of your diagram including entrances, office area, kitchen, storage areas, dining rooms, lounges, function rooms, restrooms, decks and all areas that you are requesting approval from the Division for liquor consumption.



Topsham Board of Selectmen

Signatures:

Date: _____

Linda Dumont

From: Chris Lewis
Sent: Friday, March 6, 2020 11:16 AM
To: Linda Dumont
Subject: RE: liquor license

There are no concerns with the liquor license being issued from the Police Department.

Christopher A. Lewis
Chief of Police
Topsham Police Department
100 Main Street
Topsham, ME 04086
207-725-4337
Fax: 207-725-4604
Email: clewis@topshammaine.com

From: Linda Dumont
Sent: Friday, March 06, 2020 10:58 AM
To: Chris Lewis <clewis@topshammaine.com>; Chris McLaughlin <cmclaughlin@topshammaine.com>; Mike Labbe <mlabbe@topshammaine.com>
Subject: liquor license

Hi All,
The Duck Pub located at 114 Village Dr. Highland Green has submitted their application for a liquor license renewal and a special amusement permit. Is it possible to inspect ASAP as they have received a 10 day extension from the division of liquor licensing for their expired liquor license. As far as the SA I will put them on the agenda for the April 2 BoS meeting ? Thanks, Linda

Linda J. Dumont
Town Clerk
Registrar of Voters & General Assistance Coordinator
Town of Topsham
100 Main Street
Topsham, Maine 04086
ldumont@topshammaine.com
(207) 373-5091
Fax (207) 725-1733

Tyler Washburn

From: Chris McLaughlin
Sent: Friday, March 13, 2020 11:46 AM
To: Tyler Washburn
Subject: Duck Pub

Tyler,

The duck pub has made all of the requested changes to meet code. I am okay with renewing their liquor license at this time.

Chris

Chris McLaughlin
Fire Chief
100 Main St.
Topsham, ME 04086
207-725-7581



The Times Record

Local. Legitimate. Journalism.

Midcoast Maine's Only Daily Newspaper

Classified Advertising Proof

Linda Dumont
Town of Topsham
ATTN: FINANCE MANAGER
100 MAIN STREET
TOPSHAM
ME
04086
(207) 725-1724
dfischer@topshammaine.com

Thank you for placing your advertisement with us.

Your order information and a preview of your advertisement are attached below for your review. If there are changes or questions, please contact the classified department at (207) 729-3311

Thank you

(207) 729-3311

sodell@timesrecord.com

Monday – Friday 8:00 am – 4:30pm

Order Number	0185288	Order Price	\$38.87
Sales Rep.	Sara Odell	PO No.	Tyler Washburn
Account	ATR359	Payment Type	Invoice
Publication	The Times Record	Number of dates	1
First Run Date	05/18/2020	Last Run Date	05/18/2020

Public Notice

NOTICE PUBLIC HEARING
TOWN OF TOPSHAM NOTICE IS HEREBY GIVEN that the Board of Selectmen of the Town of Topsham shall hold a virtual public hearing on May 21, 2020 at 6:30 P.M. to consider an application for a Special Amusement permit for The Duck Pub located at 114 Village Drive. Any and all person(s) may appear to show cause why said application should or should not be approved.



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF ALCOHOLIC BEVERAGES AND LOTTERY OPERATIONS
DIVISION OF LIQUOR LICENSING AND ENFORCEMENT

TELEPHONE: (207) 624-7220
FAX: (207) 287-3434
EMAIL INQUIRIES: maineliquor@maine.gov

Thank you for your interested in becoming a licensed establishment to sell and serve alcoholic beverages in Maine. To avoid any delay in the processing of your application and the subsequent issuance of your liquor license, please use the following checklist to assist you in completing the application. If you are renewing your license, this checklist is useful as well.

- Your application has been completed in its entirety and is legible. For a renewal, please submit your application 30 days prior to the expiration date of your liquor license.
- Your application is signed and dated by a duly authorized person.
- The application is signed and approved by the Town or City Municipal Officers or County Commissioners.
- The license fee submitted is for the correct fee for the license class for which you are applying and includes the \$10.00 filing fee.
 - The check must be made payable to "Treasurer, State of Maine"; both the license and filing fees can be submitted on one check.
 - If the licensee/applicant(s) is in an unorganized township, the application must be approved by the County Commissioners and the \$10.00 filing fee must be paid to them. Please be sure to include a copy of the receipt of payment with your application.
- For a renewal, the dollar amount of your gross income for food, liquor and guest rooms, if applicable must be completed – see Section I.1
- A diagram of the facility to be licensed must accompany all applications whether for a new license or the renewal of an existing license
- If you are a registered business entity with the Maine Secretary of State's office like a corporation or a limited liability company, you must complete Section VII of the application. This does not need to be completed if you are a sole proprietor.
- Have you applied for other required licensing from other state and federal agencies? See attached list.

Important – all applications whether for a new license or to renew an existing license for an on-premises liquor licenses must contact their Municipal Officials or the County Commissioners in unincorporated places to have their application approved and signed prior to submitting it to the Bureau for further consideration.

The address to send your completed application to:

1. Mailing address:
Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
8 State House Station
Augusta, ME 04333-0008
2. Courier/overnight address:
Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
10 Water Street
Hallowell, ME 04347

The following licenses/permits may be required prior to be licensing as an on-premises licensee with the Bureau

Obtained ✓	License/Permit	State/Federal Agency to Contact	Telephone Number	Physical Location
	Seller Certificate or Sales Tax Number	Maine Revenue Services www.maine.gov/revenue	(207) 624-9693	51 Commerce Dr. Augusta
	Health License	Health and Human Services www.maine.gov/dhhs	(207) 287-5671	286 Water St, 3 rd floor, Augusta
	Victualer's License	Municipality where premise is located.	Contact your town office or county office	Contact your town office or county office
	Shellfish License	Marine Recourses www.maine.gov/dmr	(207) 624-6550	<ul style="list-style-type: none"> • 32 Blossom Lane, Augusta • 194 McKown Point Rd, West Boothbay Harbor • Lamoine State Park, Lamoine • 650 State St, Bangor • 317 Whitneyville Rd, Jonesboro
	Dance or Entertainment License	Fire Marshall's Office www.maine.gov/dps/fmo	(207) 626-3882	45 Commerce Drive, Suite 1, Augusta
	Federal I.D. Number	www.irs.gov	(800) 829-4933	
	Legal business names for corporations and limited liability companies and "Doing Business As" Names (assumed names)	Secretary of State, Bureau of Corporations, Elections and Commissions www.maine.gov/sos/ccc	(207) 624-7752	111 Sewall St, 3 rd Fl. Augusta
	Retail Beverage Alcohol Dealers Permit	Alcohol and Tobacco Tax and Trade Bureau (TTB) https://www.ttb.gov/nrc/retail-beverage-alcohol-dealers	(877) 882-3277	



STATE OF MAINE
DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES
BUREAU OF ALCOHOLIC BEVERAGES AND LOTTERY OPERATIONS
DIVISION OF LIQUOR LICENSING AND ENFORCEMENT

Application for an On-Premises License

All Questions Must Be Answered Completely. Please print legibly.

Division Use Only	
License No:	
Class:	By:
Deposit Date:	
Amt. Deposited:	
Payment Type:	
OK with SOS: Yes <input type="checkbox"/> No <input type="checkbox"/>	

**Section I: Licensee/Applicant(s) Information;
 Type of License and Status**

Legal Business Entity Applicant Name (corporation, LLC): Sandbaggers Golf LLC	Business Name (D.B./A): The Duck Pub
Individual or Sole Proprietor Applicant Name(s):	Physical Location: 114 Village Dr. Topsham, ME 04086
Individual or Sole Proprietor Applicant Name(s):	Mailing address, if different:
Mailing address, if different from DBA address:	Email Address: info@resurrectiongolf.com
Telephone # Fax #: 207-939-8626	Business Telephone # Fax #: 207-405-2000
Federal Tax Identification Number: 82-1174335	Maine Seller Certificate # or Sales Tax #: 1184927
Retail Beverage Alcohol Dealers Permit:	Website address: www.theduckpub.com

1. New license or renewal of existing license? New Renewal

If a renewal, please provide the following information:

Your current license expiration date: 03/05/2020

The dollar amount of gross income for the licensure period that will end on the expiration date above:

Food: \$ 126,475.00 Beer, Wine or Spirits: \$ 59,998.00 Guest Rooms: \$ 0.00

2. Please indicate the type of alcoholic beverage to be sold; (check all that apply)

Malt Liquor (beer) Wine Spirits

3. Indicate the type of license applying for: (choose only one)

- | | | |
|---|--|---|
| <input checked="" type="checkbox"/> Restaurant
(Class I, II, III, IV) | <input type="checkbox"/> Class A Restaurant/Lounge
(Class XI) | <input type="checkbox"/> Class A Lounge
(Class X) |
| <input type="checkbox"/> Hotel
(Class I, II, III, IV) | <input type="checkbox"/> Hotel – Food Optional
(Class I-A) | <input type="checkbox"/> Bed & Breakfast
(Class V) |
| <input type="checkbox"/> Golf Course with auxiliary and mobile cart options
(Class I, II, III, IV) | | <input type="checkbox"/> Tavern
(Class IV) |
| <input type="checkbox"/> Qualified Caterer | <input type="checkbox"/> Self-Sponsored Events (Qualified Caterers Only) | |
| <input type="checkbox"/> Other: _____ | | |

Refer to Section V for the License Fee Schedule

4. If application is for a new license or the business is under new ownership, indicate starting date:

5. Business records are located at the following address:

114 Village Dr. Topsham, ME 04086

6. Is licensee/applicant(s) a business entity like a corporation or limited liability company?

Yes No If Yes, complete Section VII at the end of this application

7. Do you own or have any interest in any another Maine Liquor License? Yes No

If yes, please list license number, business name, and complete physical location address: (attach additional pages as needed using the same format)

Name of Business	License Number	Complete Physical Address
Preservation Bath LLC	3396	387 Whiskeag Rd. Bath, ME 04530

8. List name, date of birth, place of birth for all applicants including any manager(s) employed by the licensee/applicant. Provide maiden name, if married. (attach additional pages as needed using the same format)

Full Name	DOB	Place of Birth
Sean McCarthy	04/17/1990	Portland, ME

Residence address on all the above for previous 5 years

Name Address:
Sean McCarthy - 39 High St. Bangor, ME; 435 River Rd. Woolwich, ME; 10 Cresfield Ter. Portland, ME

Name Address:

Name Address:

Name Address:

9. Is the licensee/applicant(s) citizens of the United States? Yes No

10. Is the licensee/applicant(s) a resident of the State of Maine? Yes No

11. For a licensee/applicant who is a business entity as noted in Section I, does any officer, director, member, manager, shareholder or partner have in any way an interest, directly or indirectly, in their capacity in any other business entity which is a holder of a wholesaler license granted by the State of Maine?

Yes No

Not applicable – licensee/applicant(s) is a sole proprietor

12. Is the licensee/applicant(s) directly or indirectly giving aid or assistance in the form of money, property, credit, or financial assistance of any sort, to any person or business entity holding a liquor license granted by the State of Maine? Yes No

13. Will any law enforcement officer directly benefit financially from this license, if issued?

Yes No

If Yes, provide name of law enforcement officer and department where employed:

14. Has the licensee/applicant(s) ever been convicted of any violation of the liquor laws in Maine or any State of the United States? Yes No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

15. Has the licensee/applicant(s) ever been convicted of any violation of any law, other than minor traffic violations, in Maine or any State of the United States? Yes No

If Yes, please provide the following information and attach additional pages as needed using the same format.

Name: Sean McCarthy Date of Conviction: 05/01/2014

Offense: OUI Location: Cumberland, ME

Disposition: Convicted

16. Has the licensee/applicant(s) formerly held a Maine liquor license? Yes No

17. Does the licensee/applicant(s) own the premises? Yes No

If No, please provide the name and address of the owner:

Seacoast Management, 114 Village Dr. Topsham, ME 04085

18. If you are applying for a liquor license for a Hotel or Bed & Breakfast, please provide the number of guest rooms available: _____

19. Please describe in detail the area(s) within the premises to be licensed. This description is in addition to the diagram in Section VI. (Use additional pages as needed)

Upstairs dining room, downstairs bar, outside patio area

20. What is the distance from the premises to the nearest school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel?

Name: Mt. Ararat High School

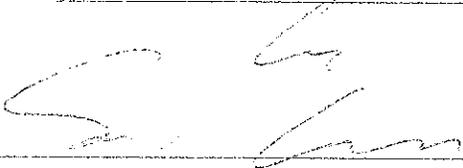
Distance: 2

Section II: Signature; Fee; Delivery of application

By signing this application, the licensee/applicant understands that false statements made on this application are punishable by law. Knowingly supplying false information on this application is a Class D Offense under Maine's Criminal Code, punishable by confinement of up to one year, or by monetary fine of up to \$2,000 or by both.

Please sign and date in blue ink.

Dated: 3-5-2020



Signature of Duly Authorized Person*

Signature of Duly Authorized Person*

SEAN R. McLELLAN

Printed Name Duly Authorized Person

Printed Name of Duly Authorized Person

*The person signing this application must appear in Section VII on this application.

Section III: For use by Municipal Officers and County Commissioners only
Approval of an application for an on-premises liquor license

The undersigned hereby certifies that we have complied with the process outlined in 28-A M.R.S. §653 and approve this on-premises liquor license application on this date: 3/13/2020

Check only one: City Town Unorganized Territory

Name of City/Town/Unorganized Territory: Town of Topsham

Who is approving this application? Municipal Officers
 County Commissioners of _____ County

Please Note: The Municipal Officers or County Commissioners must confirm that the records of Local Option Votes have been verified that allows this type of establishment to be licensed by the Bureau for the type of alcohol to be sold for the appropriate days of the week. Please check this box to indicate this verification was completed.

Signature of Officials	Printed Name and Title
	Tyler Washburn, Interim Town Clerk

This Approval Expires in 60 Days

Included below is the section of Maine's liquor laws regarding the approval process by the municipalities or the county commissioners. This is provided as a courtesy only and may not reflect the law in effect at the time of application. Please see <http://www.mainelegislature.org/legis/statutes/28-A/title28-Asec653.html>

§653. Hearings; bureau review : appeal

1. **Hearings.** The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, may hold a public hearing for the consideration of applications for new on-premises licenses and applications for transfer of location of existing on-premises licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.

A. The bureau shall prepare and supply application forms.

B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located.

C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premises license or transfer of the location of an existing on-premises license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premises license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premises license that has been extended pending renewal within 120 days of the filing of the application.

D. If an application is approved by the municipal officers or the county commissioners but the bureau finds, after inspection of the premises and the records of the applicant, that the applicant does not qualify for the class of license applied for, the bureau shall notify the applicant of that fact in writing. The bureau shall give the applicant 30 days to file an amended application for the appropriate class of license, accompanied by any additional license fee, with the municipal officers or county commissioners, as the case may be. If the applicant fails to file an amended application within 30 days, the original application must be denied by the bureau. The bureau shall notify the applicant in writing of its decision to deny the application including the reasons for the denial and the rights of appeal of the applicant.

2. **Findings.** In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:

A. Conviction of the applicant of any Class A, Class B or Class C crime;

B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control;

C. Conditions of record such as waste disposal violations, health or safety violations or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner;

D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises;

D-1. Failure to obtain, or comply with the provisions of, a permit for music, dancing or entertainment required by a municipality or, in the case of an unincorporated place, the county commissioners;

E. A violation of any provision of this Title;

F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601; and

G. After September 1, 2010, server training, in a program certified by the bureau and required by local ordinance, has not been completed by individuals who serve alcoholic beverages.

3. Appeal to bureau. Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.

A. Repealed

B. If the decision appealed from is an application denial, the bureau may issue the license only if it finds by clear and convincing evidence that the decision was without justifiable cause.

4. Repealed

5. Appeal to District Court. Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt of the written decision of the bureau.

An applicant who files an appeal or who has an appeal pending shall pay the annual license fee the applicant would otherwise pay. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

Section IV: Terms and Conditions of Licensure as an Establishment that sells liquor for on-premises consumption in Maine

- The licensee/applicant(s) agrees to be bound by and comply with the laws, rules and instructions promulgated by the Bureau.
- The licensee/applicant(s) agrees to maintain accurate records related to an on-premise license as required by the law, rules and instructions promulgated or issued by the Bureau if a license is issued as a result of this application.
 - The licensee/applicant(s) authorizes the Bureau to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also any books, records and returns during the year in which any liquor license is in effect.
- Any change in the licensee's/applicant's licensed premises as defined in this application must be approved by the Bureau in advance.
- All new applicants must apply to the Alcohol and Tobacco Tax and Trade Bureau (TTB), for its Retail Beverage Alcohol Dealers permit. See the TTB's website at <https://www.ttb.gov/nrc/retail-beverage-alcohol-dealers> for more information.

Section V: Fee Schedule

Filing fee required. In addition to the license fees listed below, a filing fee of \$10.00 must be included with all applications.

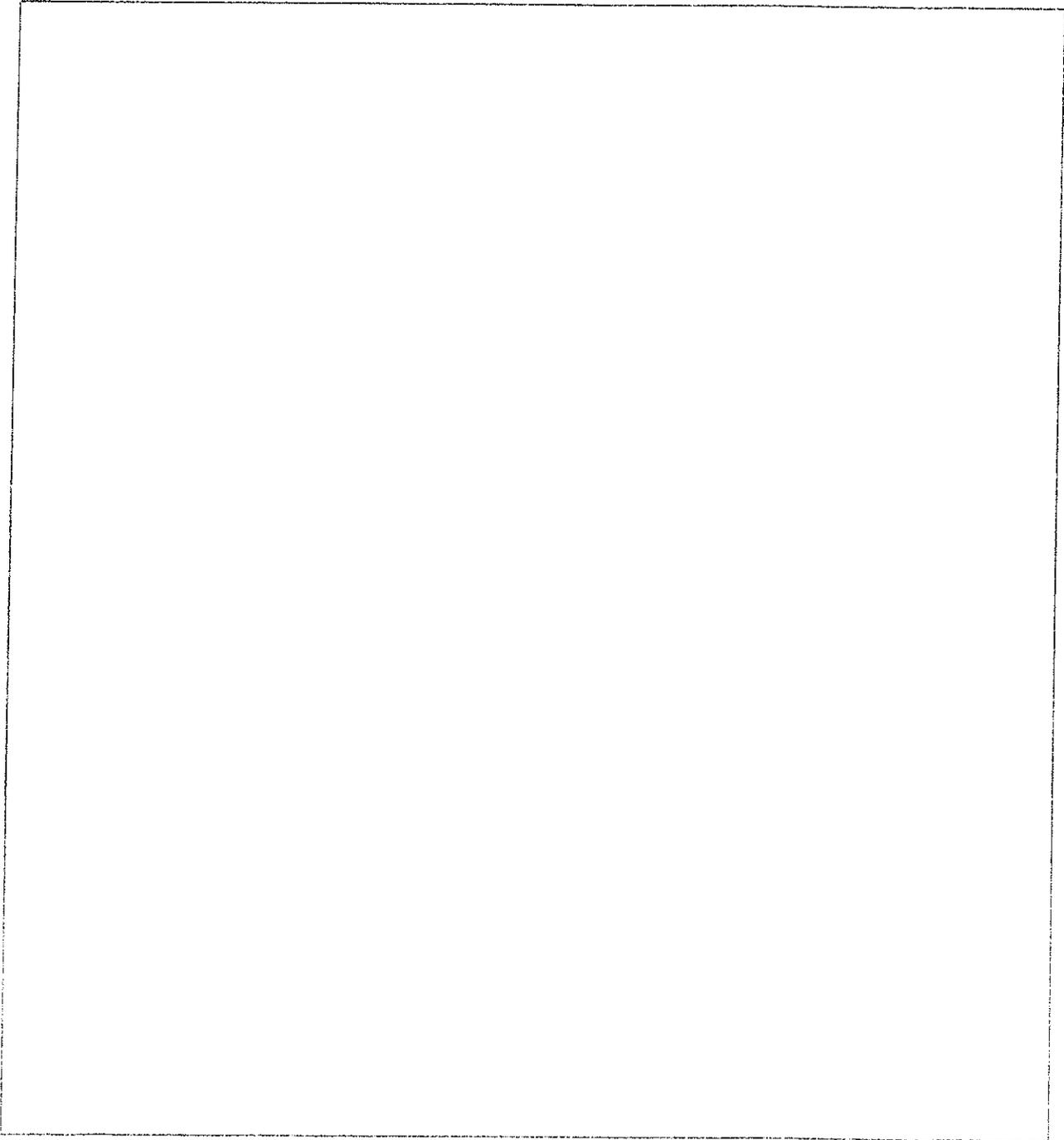
Please note: For Licensees/Applicants in unorganized territories in Maine, the \$10.00 filing fee must be paid directly to County Treasurer. All applications received by the Bureau from licensees/applicants in unorganized territories must submit proof of payment was made to the County Treasurer together with the application.

<u>Class of License</u>	<u>Type of liquor/Establishments included</u>	<u>Fee</u>
Class I	For the sale of liquor (malt liquor, wine and spirits) This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers	\$ 900.00
Class I-A	For the sale of liquor (malt liquor, wine and spirits) This class includes only hotels that do not serve three meals a day.	\$1,100.00
Class II	For the Sale of Spirits Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; and Vessels.	\$ 550.00
Class III	For the Sale of Wine Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	\$ 220.00
Class IV	For the Sale of Malt Liquor Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.	\$ 220.00
Class III and IV	For the Sale of Malt Liquor and Wine Only This class includes: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Courses; Hotels; Indoor Ice-Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts.	\$ 440.00
Class V	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Club without catering privileges.	\$ 495.00
Class X	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Class A Lounge	\$2,200.00
Class XI	For the sale of liquor (malt liquor, wine and spirits) This class includes only a Restaurant Lounge	\$1,500.00
Self-Sponsored Events	This class is for Qualified Caterers Only	\$ 700.00

Section VI Premises Floor Plan

In an effort to clearly define your license premise and the areas that consumption and storage of liquor authorized by your license type is allowed, the Bureau requires all applications to include a diagram of the premise to be licensed.

Diagrams should be submitted on this form and should be as accurate as possible. Be sure to label the following areas: entrances, office area, coolers, storage areas, display cases, shelves, restroom, point of sale area, area for on-premise consumption, dining rooms, event/function rooms, lounges, outside area/decks or any other areas on the premise that you are requesting approval. Attached an additional page as needed to fully describe the premise.



Section VII: Required Additional Information for a Licensee/Applicant for an On-Premises Liquor License Who are Legal Business Entities

Questions 1 to 4 of this part of the application must match information in Section I of the application above and match the information on file with the Maine Secretary of State's office. If you have questions regarding your legal entity name or DBA, please call the Secretary of State's office at (207) 624-7752.

All Questions Must Be Answered Completely. Please print legibly.

1. Exact legal name: Sandbaggers Golf LLC
2. Doing Business As, if any: The Duck Pub, Highland Green Golf Course
3. Date of filing with Secretary of State: 05/01/2017 State in which you are formed: ME
4. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine:

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors, managers, members or partners and the percentage ownership any person listed: (attached additional pages as needed)

Name	Address (5 Years)	Date of Birth	Title	Percentage of Ownership
Resurrection Golf, LLC	114 Village Dr. Topsham, ME		Pass through	100.0000
Owners of Resurrection Golf:				
Kevin McCarthy	1551 Dunwoody Village Parkway	05/06/1955	President	62.0000
Sean McCarthy	10 Cresfield Ter. Portland, ME	04/17/1990	VP	33.0000
Ryan Atwood	46 Ward Road	10/05/1982	Owner	5.0000

(Ownership in non-publicly traded companies must add up to 100%.)

Board of Selectmen Meeting

For the date of: 05/21/2020

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number: 26-32

(If this is Unfinished Business, please remember to research and enter the original agenda number above. For Regular Agenda items, the Secretary will assign a number.)

Brief Title of consent or Agenda Item: Consideration and any appropriate action regarding revised version of ReVision remote-sited municipal solar PPA contract.

Brief Description of Consent or Agenda Item:

Submitted by: John Shattuck, TDI

Date: 05-14-2020

Revised 08-2002

MEMORANDUM

Date: 2020-05-14

For: 2020-05-21 Selectmen's meeting

Fr: John Shattuck

To: Derek Scrapchansky & Board of Selectmen

Re: Consideration of revised/negotiated ReVision contract

Attached documents

- 2020-05-13 ReVision remote-sited municipal solar PPA – FINAL redline
- 2020-05-13 ReVision remote-sited municipal solar PPA – FINAL execution
- 2020-05-14 Decker statement re revised PPA protects Town's interests
- 2020-04-08 ReVision-Samson email re need to act promptly to ensure lock-in
- 2020-04-17 ReVision-Samson email re Topsham not locked-in
- 2020-05-13 Decker-Hinchman correspondence re final PPA & over-sold project

Background

By 2020-01-31, the Town received three municipal solar PPA proposals in response to the RFP process initiated by the Topsham Solar Advocates (TSA). At the Selectmen's 2020-02-20 meeting, the TSA stated that they believed that the ReVision proposal represented the best value for the Town. The Selectmen directed the Town Manager to further explore the feasibility and value of the ReVision proposal and to request a draft contract. The Town received ReVision's proposed draft contract on 2020-03-06, and has since received solar engineering and legal reviews of that draft contract from Rich Roughgarden of Maine Solar Engineering, and Kevin Decker, Esq. of Bernstein Shur, respectively.

At their April 16th, 2020 virtual meeting, the Selectmen reviewed ReVision's 2020-03-06 proposed draft contract and the related engineering and legal reviews. The Selectmen's discussion noted that due diligence and appropriate prudence required that the Town protect its interests with an attorney-supported negotiation of the terms of a final contract before proceeding, as would be the case with any contract with a similar amount of money, length of commitment and potential liabilities involved. The Selectmen voted to direct the Town Manager to engage the Town's attorneys to negotiate final contract terms that protects the Town's interests in these areas.

Memorandum

Last evening, May 13, 2020, Kevin Decker forwarded the attached negotiated revised version of the ReVision remote-sited PPA, which has been accepted by ReVision's attorney. Also attached is Kevin's statement affirming that he believes this agreement appropriately protects the Town's interests in terms of liability, parity/equity in contract terms and remedies.

The issue of getting Topsham's contract terms "locked-in" have been a recurring theme of the Town's and TSA's discussions with ReVision since January – for the most recent examples, please see attached:

- 2020-04-08 ReVision-Samson email re need to act promptly to ensure lock-in
- 2020-04-17 ReVision-Samson email re Topsham not locked-in

ReVision's written correspondence with the Town did not make an unambiguous, explicit commitment to lock-in Topsham's contract terms based on any action short of a formal contract execution. But I believe it is fair to say that both Town staff and TSA members understood that a clear, good faith communication of the Town's intention to proceed with a contract would be sufficient to lock-in those terms. As indicated in my 2020-04-17 email to ReVision, I certainly expected this to be the case, but ReVision's 2020-04-17 email reply made it clear that there would be no lock-in prior to a formal contract execution.

So, a disappointing element of the final negotiation process is the disclosure by ReVision that this project site has in fact been oversold by approximately 11% - please see attached:

- 2020-05-13 Decker-Hinchman correspondence re final PPA & over-sold project

As indicated by this 2020-05-13 message from ReVision's attorney, ReVision has not yet determined how to resolve this issue. However, Kevin Decker has assured me that the attached revised/final ReVision PPA does include the full, original amount of the Town's energy purchase, and does not authorize any party to unilaterally reduce that amount because the project site was oversold or oversubscribed. Accordingly, the Town's execution of this revised contract would not commit it to accepting a future unilateral reduction in the amount of its energy purchase because the project site was oversold or oversubscribed.

But the contract is not fully executed until it is also executed by ReVision. Since ReVision has not yet determined how to resolve the oversold/oversubscribed project issue, it will clearly need to resolve this issue before it can execute all the still-pending PPA contracts. Possible solutions outlined in the message from ReVision's attorney include bumping a potential purchaser to another project site, or reducing all pending purchasers' purchase amounts by as much as 11%.

The Selectmen will need to consider how they can best resolve this uncertainty. For example, they could decide to execute the current version of the contract and communicate that they will not consider and further revision of terms. Depending on how ReVision resolves the oversold/oversubscribed project issue, this could result in the Town being excluded from the project. Alternatively, the Selectmen could decide that they are willing to proceed with a ReVision PPA even if that means the Town's energy purchase amount would be reduced to resolve the issue.

From: Nick Sampson <nick@revisionenergy.com>
Sent: Wednesday, April 8, 2020 10:07 AM
To: John Shattuck <jshattuck@topshammaine.com>
Cc: Derek Scrapchansky <dscrapchansky@topshammaine.com>
Subject: Re: CMP billing data

Hi John,

I hope that you're doing well and staying safe. Understanding that the current situation with Covid-19 could be slowing things down, I wanted to briefly follow up to see how the Town of Topsham's legal review, and conversation with Rich Roughgarden, are progressing.

We're seeing the state's new solar program start to fill up pretty quickly with signed interconnection applications, so signing the Power Purchase Agreement in time to lock in space on the proposed site will help ensure that the Town is able to take advantage of this new program before the PUC starts its review process for possible changes. We'd love to try to make sure that the Town is able to take advantage of the project and savings opportunity that we've proposed!

Please let me know if you have any questions and thank you in advance for any updates that you can provide.

Best,

Nick

From: Nick Sampson <nick@revisionenergy.com>
Sent: Friday, April 17, 2020 16:08
To: John Shattuck <jshattuck@topshammaine.com>
Cc: Derek Scrapchansky <dscrapchansky@topshammaine.com>; Steve Hinchman <steveh@revisionenergy.com>
Subject: Re: CMP billing data

Hi John, Thanks so much for this great news! The Town's attorneys can reach out to ReVision's chief counsel, Steve Hinchman (copied), and myself with their comments and questions on the PPA. We are still holding a spot for the Town of Topsham on the Dirt Capital site, so assuming an efficient legal review, we'll be able to lock the Town into the site soon! We look forward to hearing from Bernstein Shur and I hope you have a great weekend. Best, Nick

Nick Sampson
Employee-Owner | Commercial Solar Consultant
ReVision Energy

From: jshattuck@topshammaine.com <jshattuck@topshammaine.com>
Sent: Friday, April 17, 2020 1:46 PM
To: Nick Sampson <nick@revisionenergy.com>
Cc: Derek Scrapchansky <dscrapchansky@topshammaine.com>
Subject: CMP billing data

NICK: Derek asked me to follow up with you regarding last night's Selectmen's meeting, and I'm pleased to report that the Selectmen voted to pursue a final version of ReVision's proposed contract. The Town's attorneys (Bernstein-Shur) did identify some contract terms that they felt required further clarification. The selectmen have agreed and asked Derek to engage our counselors to expedite the formation of a final contract. Please let me know whom you'd like our attorneys should contact for this purpose, and confirm that this decision by the Selectmen will ensure Topsham's participation in the Dirt Capital project site described in the proposed contract. Thanks, John

John Shattuck
Topsham Economic & Community Development

From: Kevin J. Decker <kdecker@bernsteinshur.com>

Sent: Wednesday, May 13, 2020 17:21

To: Derek Scrapchansky <dscrapchansky@topshammaine.com>; John Shattuck <jshattuck@topshammaine.com>

Subject: FW: Solar PPA for Topsham

John and Derek,

The good news is that ReVision accepted all of my proposed redlines in the latest round. So this agreement (the PDF version) is in final form.

The bad news is in Steve's email below, regarding the project still being oversold by 11%. I had emailed him to clarify a point (about whether another buyer's reduction was already figured in – it is). I will now convey additional displeasure to him on behalf of the Town.

Some combination of b and c seems like it may be the most equitable, but frankly this is ReVision's problem to solve, not ours.

-Kevin

Kevin J. Decker

BERNSTEINSHUR - Attorney

207 228-7131 direct

From: Steve Hinchman <steveh@revisionenergy.com>

Sent: Wednesday, May 13, 2020 12:54 PM

To: Kevin J. Decker <kdecker@bernsteinshur.com>

Cc: Nick Sampson <nick@revisionenergy.com>; Chris Donovan <cdonovan@revisionenergy.com>

Subject: RE: Solar PPA for Topsham

Kevin – we will be able to accept your final redlines. I also corrected the delivery point. Attached is the final PPA redlines for Topsham, together with an execution copy for today's packet.

If all municipalities in final stage negotiations (only 2 have signed so far) all execute at roughly the same time (which by pure coincidence seems to be happening – must all have the same meeting dates) then we will be oversold by roughly 11%. We do have a second site that looks like it will make 2020 construction, so our options will be to

- a) Switch the last 500,000 kWh in the door to the later site,
- b) Ask everyone if they want to reduce their Purchaser's Percentage and if so, by how much until we get to the right number,

- c) Ask everyone to take 11% less, or
- d) A combination of the above

No matter what we do, because these PPAs are lumpy there will have to be a slight adjustment for everyone so we can match the Solar Array production exactly.

Please call if you have questions.

Steve



Steve Hinchman | Employee-Owner | Chief Counsel, Director of Development
ReVision Energy, a Certified B Corp

207.837.8637 (c)

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Solar Power Purchase Agreement

This Solar Power Purchase and Net Energy Billing Credit Purchase and Sale Agreement (this "Agreement") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by Seller below (the "Effective Date").

Purchaser:	Town of Topsham	Seller:	Dirt Solar LLC, a Maine corporation
Name and Address	Town of Topsham Attention: Derek Scrapchansky, Town Manager 100 Main Street Topsham, ME 04086	Name and Address	Dirt Solar LLC c/o Aligned Solar Partners 2 LLC c/o Aligned Climate Capital 41 Madison Avenue, 31 st Floor New York NY 10010
Phone	(207) 725-5821	Phone	(202) 669-5977
E-mail		E-mail	brendan@alignedclimatecapital.com

WHEREAS, Seller is in the business of financing, developing, owning, operating, and maintaining solar photovoltaic electric generation facilities;

WHEREAS, Seller is the lessee of the property located at 35 East Ridge Road, Skowhegan, ME 04976 (the "Premises"), and has the right to develop renewable energy generation facilities at the Premises, as defined hereunder;

WHEREAS, Seller plans to finance, install, construct, own, operate, and maintain a solar photovoltaic electric generation facility at the Premises;

WHEREAS, the Purchaser together with other entities that intend to execute an agreement to purchase electrical energy and the Net Energy Billing credits, as set forth in 35-A M.R.S. § 3209-B and Chapter 313 of the Maine Public Utilities Commission Rules ("Net Energy Billing Credits") from the System described below under similar terms and conditions (all together as the "Purchasing Entities") as set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions of the purchase and sale of electrical energy and Net Energy Billing Credits associated with solar generated electric energy from the solar photovoltaic electric generation facility described in **Exhibit 2** (the "System") for Purchaser, interconnected to the utility grid as described in **Exhibit 2**.

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Basic Terms and Conditions
- Exhibit 2** System Description
- Exhibit 3** Credit Information – omitted by agreement of the Parties
- Exhibit 4** General Terms and Conditions

IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be signed on their behalf by their duly authorized representatives who, by their signatures below, attest that they have the power and authority to bind their respective Party.

Purchaser:

Town of Topsham

By (signature): _____

Printed Name: _____

Title: _____

Date: _____

Seller:

Dirt Solar LLC

By (signature): _____

Printed Name: _____

Title: _____

Date: _____

Exhibit 1
Basic Terms and Conditions

1. **Initial Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. [Intentionally Omitted]
3. **Additional Term:** Up to one (1) Additional Term of five (5) years.
4. **Environmental Incentives and Environment Attributes:** Accrue to Seller unless Purchaser elects to purchase Renewable Energy Credits ("RECS") generated by the System from Seller at the combined Energy and REC rate below.
5. **Contract Energy Price per Kilowatt Hour (\$/kWh):** Purchaser elects the [X] Energy Only Rate [] Energy and REC Combined Rate.

Contract Year	Estimated Total Energy Production (kWh)	Estimated Purchaser Percentage (kWh)	Energy Only Rate \$/kWh	Energy and REC Combined Rate \$/kWh
1	4,853,490	1,025,000	\$0.085	\$0.090
2	4,829,223	1,019,875	\$0.085	\$0.090
3	4,805,076	1,014,776	\$0.086	\$0.091
4	4,781,051	1,009,702	\$0.088	\$0.093
5	4,757,146	1,004,653	\$0.089	\$0.094
6	4,733,360	999,630	\$0.090	\$0.096
7	4,709,693	994,632	\$0.092	\$0.097
8	4,686,145	989,659	\$0.093	\$0.098
9	4,662,714	984,710	\$0.094	\$0.100
10	4,639,401	979,787	\$0.096	\$0.101
11	4,616,204	974,888	\$0.097	\$0.103
12	4,593,122	970,013	\$0.099	\$0.104
13	4,570,157	965,163	\$0.100	\$0.106
14	4,547,306	960,338	\$0.102	\$0.108
15	4,524,570	955,536	\$0.103	\$0.109
16	4,501,947	950,758	\$0.105	\$0.111
17	4,479,437	946,004	\$0.106	\$0.113
18	4,457,040	941,274	\$0.108	\$0.114
19	4,434,755	936,568	\$0.109	\$0.116
20	4,412,581	931,885	\$0.111	\$0.118
21	4,390,518	927,226	\$0.113	\$0.119
22	4,368,565	922,590	\$0.114	\$0.121
23	4,346,723	917,977	\$0.116	\$0.123
24	4,324,989	913,387	\$0.118	\$0.125
25	4,303,364	908,820	\$0.120	\$0.127

6. **Condition Satisfaction Date:** September 30, 2020
7. **Anticipated Commercial Operation Date:** December 31, 2020
8. **Purchaser Options to Purchase System.** [X] None, or [] As set forth in Section 16.b.
9. **Outside Commercial Operation Date:** December 31, 2021. In the event of any delay outside the reasonable control of the Seller and provided that the Seller is continuing to diligently pursue the permitting, construction, interconnection, and installation of the System, the Outside Commercial Operation Date shall be equitably extended to a date mutually agreed to by the Parties, taking into account the facts, circumstances and length of such delay.

End of Exhibit 1

Exhibit 2
System Description

1. **System Location:** 35 East Ridge Road, Skowhegan, ME 04976
2. **System Size:** 3,937 DC kW (panel nameplate capacity); 2,625 kW (inverter rating).
3. **Expected First Year Energy Production (kWh):** 4,853,490 (plus or minus ten (10) percent annually, depending upon weather). Expected energy production shall be de-rated by one half of one percent (0.5%) annually.
4. **Expected Structure:** Ground Mount Roof Mount Parking Structure Other
5. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
REC TwinPeak 2S 375 W, or equivalent, with manufacturer's 25-year warranty	10,500

6. **Expected Inverter(s):**

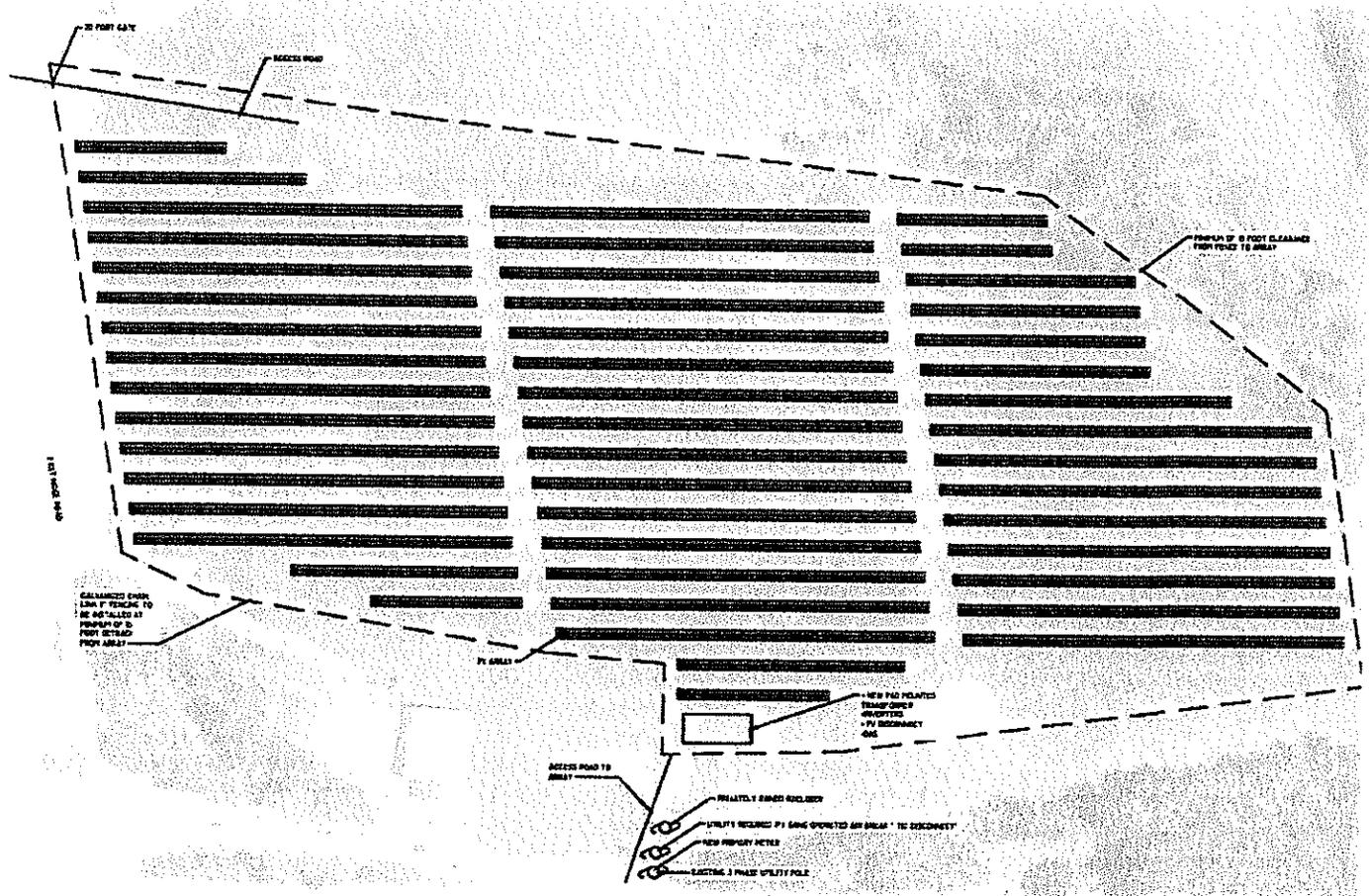
<u>Manufacturer/Model</u>	<u>Quantity</u>
SMA Sunny Highpower Peak 3 125 kW, or equivalent, with manufacturer's 10-year warranty	21

7. **Preliminary System Layout:** See Exhibit 2, Attachment A. Subject to Section 10 below, Seller may, at its sole discretion, modify the System design as Seller deems necessary for purposes of permitting, procurement, construction and project implementation.
8. **Utility:** Central Maine Power
9. **Participating Meters:**
 - i. To be provided by Purchaser as part of the Net Energy Billing application pursuant to Exhibit 4 Section 9.b.
10. **Purchaser Percentage:** The Purchaser Percentage shall be Twenty One and 12/100 (21.12) percent of annual electric energy generated by System (the "**Purchaser Percentage**"), provided that the Contract Year 1 Purchaser's Percentage of Total Estimated Production in Exhibit 1 does not exceed 1,025,000 kWh/year ("**Purchaser's Not to Exceed Estimated Amount**"). Seller may alter the design and capacity of the System as Seller deems necessary for permitting, procurement, construction or other purposes, so long as Seller provides written Notice to Purchaser prior to the Commercial Operations Date; provided however, that (i) in the event the System capacity is increased the Purchaser's Percentage shall be adjusted downward to the extent required so that Purchaser's Percentage of the modified Total Estimated Production in Contract Year 1 does not exceed the Purchaser's Not to Exceed Estimated Amount, and (ii) in the event the System capacity is decreased the Purchaser's Percentage of the modified Total Estimated Production in Contract Year 1 is not less than seventy-five percent (75%) of the Purchaser's Not to Exceed Estimated Amount.

Exhibit 2
Attachment A:
Preliminary System Layout

Aerial Image of Premises	See Site Map, below.
Conceptual Drawing of the System	See One Line Drawing, below.
Location of System Components	Solar array to be located at 35 East Ridge Road, Skowhegan, ME 04976 as portrayed in site map. Inverters to be located inside perimeter fence.
Delivery Point	Delivery of energy to Utility, pursuant to interconnection agreement.

Preliminary Site Map:



End of Exhibit 2

Exhibit 3
Credit Information

Omitted by agreement of the Parties.

End of Exhibit 3

Exhibit 4
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electrical Energy and Net Energy Billing Credits.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, the Purchaser Percentage, as set forth in **Exhibit 2, Section 10**, of electrical energy and Net Energy Billing Credits generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the “Term”), in accordance with Section 5 below. Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the “Delivery Point”). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point, in proportion with the Purchaser Percentage. In accordance with applicable law, Purchaser may purchase electrical energy and Net Energy Billing Credits from other sources, provided that in all cases Purchaser first and foremost purchases its share of the electrical energy Net Energy Billing Credits from the System as contemplated herein. To the extent Purchaser’s Net Energy Billing Credits or payments from the Utility are anticipated to exceed ninety-five percent (95%) of the aggregate cost of Purchaser’s electric requirements over a twelve (12) month period, and subject to **Section 9(b)** of this Agreement, the Parties shall negotiate in good faith to recruit one or more Purchasing Entities or a credit-worthy, not-for-profit, school administrative unit, municipal, or quasi-municipal third party entity to purchase a portion of the Purchaser Percentage under the terms and conditions herein. Until such Purchasing Entity(ies) or third party(ies) agrees to assume responsibility for a portion of the Purchaser Percentage or if adding an additional Purchasing Entity would be prohibited by applicable law, Purchaser shall remain obligated to purchase its full Purchaser Percentage. Any purchase, sale, and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the delivery of such test energy; provided that Purchaser shall have no obligation to make any payment to Seller for such test energy or its associated Net Energy Billing Credits.
3. **Purchase and Sale of Renewable Energy Credits.** If Purchaser elects the Energy and Renewable Energy Credit (REC) combined purchase option provided in **Exhibit 1**, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, Purchaser’s Percentage of the RECs generated by the System for the Contract Year and at the price per kilowatt-hour specified for that year shown in **Exhibit 1**.
4. **Term and Termination.**
 - a. **Initial Term.** The initial term (“Initial Term”) of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The “Commercial Operation Date” is the date Seller gives Purchaser written notice that the System is mechanically complete, approved to operate in parallel with the Utility’s electric distribution system, and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) business days of the date of such notice. Upon Purchaser’s request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller’s contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser (the “Utility”), as set forth on **Exhibit 2**. If the actual Commercial Operation Date falls or is estimated to fall after the Outside Commercial Operation Date specified in Section 8 of **Exhibit 1**, as may have been equitably extended pursuant to said **Section 8**, Purchaser may terminate this Agreement by providing thirty (30) days prior written notice to the Seller, without liability for costs or damages or triggering a default under this Agreement, and the termination date in such case shall be the date of said written notice. This Agreement is effective as of the Effective Date and Purchaser’s intentional failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing its obligations hereunder shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.
 - b. **Additional Terms after Contract Year 20.** At mutual agreement of the Parties, prior to the end of Contract Year 20 and subject to Section 9(c) below, either Party may give the other Party written notice of its desire to extend this Agreement. If the Party receiving such notice thereafter gives its consent in writing to extend the Agreement, then this Agreement shall be extended on the terms and conditions set forth herein for one (1) Additional Term, as defined

in **Exhibit 1**, commencing after the end of Contract Year 20. Notice of intent to continue for such an Additional Term shall be given, if at all, not less than ninety (90) days before the last day of Contract Year 20.

5. **Billing and Payment.**

a. **Monthly Charges.**

- i. **Energy Only Charges.** If Purchaser elects the Energy Only rate in Exhibit 1, Purchaser shall pay Seller monthly (or quarterly, if Seller elects quarterly invoicing under subsection (c) of this **Section 5**) for the electrical energy and Net Energy Billing Credits associated with the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the "Contract Price"), subject to subsection (d) of this **Section 5**. The periodic payment for such electrical energy and Net Energy Billing Credits will be equal to the applicable \$/kWh rate multiplied by the Purchaser Percentage of the number of kWh of energy generated during each month of the applicable billing period, as measured by the Utility meter as reflected in the Utility report to Seller describing the quantity and value of Net Energy Billing Credits generated for the applicable billing period.
- ii. **Combined Energy and REC Charges.** If Purchaser elects the Energy and REC Combined rate in Exhibit 1, Purchaser shall pay Seller monthly (or quarterly, if Seller elects quarterly invoicing under subsection (c) of this **Section 5**) for the electrical energy and Net Energy Billing Credits associated with the electric energy and RECs generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in **Exhibit 1** (the "Contract Price"), subject to subsection (d) of this **Section 5**. The periodic payment for such electrical energy and Net Energy Billing Credits and RECs will be equal to the applicable \$/kWh rate multiplied by the Purchaser Percentage of the number of kWh of energy and RECs generated during each month of the applicable billing period, as measured by the Utility meter as reflected in the Utility report to Seller describing the quantity and value of Net Energy Billing Credits generated for the applicable billing period.

b. **Monthly Invoices.** Seller shall invoice Purchaser monthly in arrears, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the amount of Net Energy Billing Credits allocated to Purchaser, (iii) the applicable Contract Price under this Agreement, and (iv) the total amount due from Purchaser. Seller shall include a copy of the monthly Utility report describing the value, quantity, and allocation of Net Energy Billing Credits to Purchaser's customer account(s) with the Utility.

c. **Seller's Option for Quarterly Invoicing.** Seller, at Seller's sole option, may elect to invoice Purchaser on a quarterly basis. If Seller exercises the option to invoice quarterly for one or more billing periods, it shall not prohibit Seller from invoicing monthly thereafter. Seller shall provide Purchaser with at least ninety (90) days prior written notice before changing the frequency of invoicing.

d. **Purchase Contingent on Allocation of Credits by Utility.** The Parties acknowledge and agree that Purchaser's obligations under this Agreement are contingent upon the Utility's acceptance of and allocation of Net Energy Billing Credits to Purchaser's customer account(s) with Utility as set forth in Section 9.b herein. During the term of this Agreement, if the Utility refuses or fails to allocate more than \$500 worth of Net Energy Billing Credits to Purchaser's customer account(s), then Purchaser may request that Seller, and Seller shall, use best efforts to remedy such situation with the Utility within sixty (60) days of such refusal or failure to allocate Net Energy Billing Credits. If Seller fails to engage in best efforts to remedy such refusal or failure by the Utility during such sixty (60) day period and Purchaser has otherwise complied with obligations under Section 9(b) and Section 11(b) herein, then Purchaser shall not be obligated to pay, and Seller shall promptly refund to Purchaser any amount paid under this Agreement, for the electrical energy that did not result in Net Energy Billing Credits allocated to Purchaser's customer account(s).

- i. **Annual Reconciliation of System Meter and Utility Meter.** In addition to the other provisions of this Section 5, annually, within ninety (90) days of the anniversary of the Commercial Operations Date, in the event of a discrepancy between the prior contract year's solar generation (as measured pursuant to Exhibit 4, Section 12 of this Agreement) and the solar electricity exported to the electric grid (as measured by the Utility meter) and the Net Energy Billing Credits allocated to Purchaser's customer account(s) with the Utility, Purchaser may seek a refund from Seller for kilowatt hours of energy Purchaser purchased from Seller that did not qualify for Utility Net Energy Billing Credits. Any such request shall be supported by documented evidence of missing Credits. Upon verification by Seller, Seller and Purchaser shall jointly seek corrective action by the Utility to restore the missing credits. If Utility fails to fully restore the Credits within sixty (60) days of the date the request was filed with the Utility, Seller shall reimburse or credit Purchaser the amount Purchaser paid Seller per kWh for each kWh of electricity that did not result in allocation of Net Energy

Billing Credits to Purchaser. If the Utility later remits such Credits to Purchaser, Purchaser shall then reimburse Seller. This reconciliation process is intended to apply only to kWh of electricity generated by the System and purchased by Purchaser that are not delivered to the Utility electric grid and does not apply to, and Seller shall not be responsible for, malfunctioning of the Utility meter or data collection system, errors in Utility billing or crediting, credits that expire or are unused by Purchaser or Purchaser's failure to properly register or maintain Net Energy Billing accounts with the Utility (unless the responsibility of Seller under this Agreement, including as provided in Section 11 herein).

- e. **Taxes.** Purchaser shall either pay or reimburse Seller for the Purchaser Percentage of any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System up to the Delivery Point, but not the construction, procurement, or design of the System or the interconnection of the System to the Utility's electric distribution system; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Force Majeure or as a result of Purchaser's acts or omissions. For purposes of this Section 5.d, "Taxes" means any federal, state and local generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include (i) any property taxes or similar taxes on the System or Premises; (ii) any charges, fees, taxes, or the like imposed by ISO New England or associated with metering or settling the energy from the System; (iii) any charges, fees, taxes, or the like associated with station service or electric energy consumed by the System; or (iv) any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- f. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law).

6. Environmental Attributes and Environmental Incentives.

- a. Unless otherwise specified in Exhibit 1, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electrical energy and Net Energy Billing Credits associated with electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall promptly pay such amounts over to Seller.
- b. **Press Releases.** To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy generated by the System and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication. Except for Contract Years in which Purchaser purchases RECs under the purchase option in Exhibit 1, Purchaser hereby acknowledges and consents to Seller's exclusive right to (i) make any claim that electric energy provided to Purchaser under this Agreement was generated by the System, (ii) all claims that Seller is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) all rights, title to and ownership of any and all RECs, credits, certificates, and registrations evidencing or representing any of the foregoing attributes and to take any action necessary for Seller to claim, register, sell or otherwise dispose of such interests.

"**Environmental Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits provided, however, that "Environmental Attributes" does not mean any electric bill or utility credits related to net metering or Net Energy Billing. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance

with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 6. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

“**Environmental Incentives**” means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority; provided, however, that “Environmental Incentives” does not mean any electric bill or utility credits related to net metering or Net Energy Billing.

“**Governmental Authority**” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission, a state Public Utilities Commission or Independent System Operator), or any arbitrator with authority to bind a party at law.

“**Tax Credits**” means any and all (a) investment tax credits, (b) production tax credits, (c) similar tax credits, grants, or rights to bonus or accelerated depreciation under federal, state or local law relating to the construction, ownership or production of energy from the System; provided, however, that “Tax Credits” does not mean any electric bill or utility credits related to net metering or Net Energy Billing.

7. Conditions to Obligations.

- a. **Conditions to Seller's Obligations.** Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:
 - i. Approval of (A) this Agreement and (B) the Site Lease, and (C) the Construction Agreement (if any) for the System by Seller and Seller's Financing Parties (if any). “**Construction Agreement**” as used in this subsection means an agreement between Seller and any contractor or subcontractor to install all or part of the System;
 - ii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits and/or, in the event the Purchaser elects to purchase RECs, that Seller will be able to transfer, assign and sell to Purchaser such RECs;
 - iii. Receipt of all necessary zoning, land use and building permits, licenses, and approvals for construction of the System; and
 - iv. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system, and for Net Energy Billing of the electricity generated by the System together with Purchaser's utility accounts.
- b. **Failure of Conditions.** If any of the conditions listed in subsection (a) or (d) are not satisfied or waived by the Condition Satisfaction Date (or by the Outside Commercial Operation Date with respect to occurrence of the Commercial Operation Date under subsection (d)), then the Parties will attempt in good faith to negotiate for the satisfaction of the failed conditions. If the Parties are unable to reach agreement then either Party may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement; provided, however, in the event Purchaser desires to terminate this Agreement pursuant to this Section due to failure of a condition in paragraphs (iii) or (iv) in subsection (a), and if failure of such condition was outside the reasonable control of the Seller and Seller is continuing to diligently pursue satisfaction of such condition, then prior to such termination, Seller shall have an additional ninety (90) days to satisfy such condition.
- c. **[Intentionally Omitted].**
- d. **Conditions to Purchaser's Obligations.** Purchaser's obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System by the Outside Commercial Operation Date specified in Section 8 of Exhibit 1, the System and Purchaser being eligible to participate in Net Energy Billing, and execution of all necessary agreements with the Utility for Net Energy Billing of the electricity generated by the System among

Purchaser's Utility meters and/or accounts. Subject to Seller's obligations in Section 8(a), Purchaser agrees to promptly execute all necessary agreements with the Utility for Net Energy Billing upon presentation of such agreements to Purchaser.

8. Seller's Rights and Obligations.

- a. **Permits and Approvals.** Seller, with Purchaser's reasonable cooperation with respect to paragraph (ii), shall use commercially reasonable efforts to obtain, at its sole cost and expense:
- i. any zoning, land use, construction, electrical and building permits, licenses and approvals required to construct, install and operate the System;
 - ii. any agreements and approvals from the Utility and/or Public Utilities Commission necessary in order to interconnect the System to the Utility's electric distribution system and engage in Net Energy Billing using energy produced by the System among Purchaser's Utility meters and/or accounts.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals. Seller shall execute and act as counterparty for the standard contract with the Utility that governs Net Energy Billing (currently called a "Commercial or Institutional Customer or Shared Financial Interest Customers Net Energy Billing Tariff Rate Agreement"), unless Purchaser notifies Seller in writing that Purchaser wishes to execute and act as counterparty for such standard contract. Where required, Purchaser shall obtain all such agreements, permits and approvals in Purchaser's name to enable and benefit operation of the System; however, Seller shall pay or reimburse Purchaser for all fees required.

- b. **Standard System Repair and Maintenance.** Seller shall construct and install the System at the Premises. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, and shall ensure that the System, including applicable environmental controls, are properly operated and maintained. Seller shall ensure that vegetation at the Premises is trimmed (including between and around rows of the System) during the Term so as to maximize solar photovoltaic electric generation at the Premises. Seller shall perform all repairs within standard industry time periods. Seller agrees to contract with ReVision Energy Inc., a local contractor, to develop, install, and perform operations and maintenance for the System and shall not replace ReVision Energy Inc. as its contractor without prior consent from Purchaser, which shall not be unreasonably withheld or delayed.
- c. **Breakdown Notice.** Seller shall notify Purchaser within five (5) business days following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Seller shall undertake any required emergency action or repairs as soon as possible.
- d. **Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, however, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser. Seller shall provide Purchaser with notice of any such suspension in accord with subsection (c).
- e. **Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement; provided, however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for its obligations under this Agreement and for the quality of the work performed by its contractors and subcontractors.
- f. **No Warranty.** NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise; provided, however, that this subparagraph shall not prevent transfer of any applicable warranties to Purchasing Entities pursuant to Section 16.

9. Purchaser's Rights and Obligations.

- a. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Notwithstanding anything else herein to the contrary, pursuant to Section 19.a., Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.
- b. **Net Energy Billing.** Purchaser shall promptly take action and execute any documents required to establish net energy billing with the Utility pursuant to 35-A M.R.S. § 3209-B and Chapter 313 of the Rules and Regulations of the Maine Public Utilities Commission, as may be amended from time to time (“**Net Energy Billing**”). Purchaser shall receive the value of any credits or payments from the Utility that may be available under Net Energy Billing or similar program for the Purchaser’s Percentage of electric energy generated by the System. It is the intent of the Parties that (i) Purchaser’s purchase of electrical energy under this Agreement will enable Purchaser to receive credits or payments from the Utility through Net Energy Billing, (ii) title to the electrical energy will ultimately pass to Utility at the Delivery Point to enable Purchaser to receive Net Energy Billing Credits, and (iii) through its purchase of electrical energy under this Agreement, Purchaser will incur no obligations or charges with respect to energy market participation or transmission or distribution of electrical energy from the System. If the foregoing intent cannot be accomplished during the Term of the Agreement, the Parties agree to negotiate in good faith to modify this Agreement to accomplish the foregoing intent without change to the economic terms of this Agreement.
- c. **Net Energy Billing After Twenty Years.**
 - i. **Eligibility.** If, twenty (20) years after the Commercial Operation Date or any time thereafter, either the Purchaser or the System is not eligible to participate in Net Energy Billing, then Purchaser shall have the right to terminate this Agreement in its sole discretion without further liability to either Party except with respect to payment of amounts accrued prior to termination. Such termination shall be effective thirty (30) days after receipt by Seller of written notice of termination from Purchaser.
 - ii. **Value of Net Energy Billing Credits.** If, twenty (20) years after the Commercial Operation Date or any time thereafter, the Purchaser and System are eligible to participate in Net Energy Billing but the rate used to calculate the value of Purchaser’s credits under Net Energy Billing is reduced by at least twenty percent (20%) compared to the average rate used during the twentieth (20th) Contract Year, then the Parties shall, within thirty (30) days following receipt by Seller from Purchaser of notice of such material change, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Purchaser shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.
- d. **Decommissioning.** Purchaser shall have no obligation or liability with respect to decommissioning associated with the System.

10. **Change in Law.**

“**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, including without limitation Net Energy Billing; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which, in the case of any of (i), (ii) or (iii), establishes requirements affecting (x) owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller’s obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations or (y) the Purchaser’s or the System’s eligibility to participate in Net Energy Billing; provided, however, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement or on the Purchaser’s or the System’s eligibility to participate in Net Energy Billing, then the Parties shall, within thirty (30) days following receipt by either Party from the other Party of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller or Purchaser (with respect to condition (y) in the above paragraph) shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

11. **Net Energy Billing Administration.** Subject to Section 8(a), Seller shall be responsible for execution of and ongoing administration of the customer Net Energy Billing agreement with the Utility (currently called a "Commercial or Institutional Customer or Shared Financial Interest Customers Net Energy Billing Tariff Rate Agreement"), including but not limited to the requirements of the Net Energy Billing Rules and the following:
 - a. **Contact Person.** Seller shall be the contact person responsible for all communications with the Utility regarding the Net Energy Billing arrangement ("**Contact Person**"), including all actions required of the Contact Person pursuant to the Net Energy Billing Rules and/or the customer Net Energy Billing agreement with the Utility. The Parties each agree to assist the Contact Person in obtaining all data, meter information, permits and approvals needed, and to promptly and timely execute all agreements with the Utility as necessary to continue and maintain the Net Energy Billing arrangement.
 - b. **Net Energy Billing Updates.** Purchaser shall provide the Contact Person with written notice of any requested changes to be conveyed to the Utility regarding its meters, accounts or account information, or the allocation of Net Energy Billing Credits among Purchaser's meters and accounts. Purchaser shall allow the Contact Person at least fifteen (15) business days to convey changes to the Utility and for the Utility to respond. Purchaser shall be solely responsible for the timeliness of changes to its Net Energy Billing meters and accounts and for the accuracy of any such changes and shall pay in full for Net Energy Billing Credits that would have been properly credited to Purchaser's meters and accounts but for Purchaser's errors, delays or mistakes in the original Net Energy Billing Credit program application or updates to the customer Net Energy Billing agreement with the Utility.
 - c. **Records Maintenance.** The Contact Person and each Party shall maintain for a period of at least two years all records related to the customer Net Energy Billing agreement with the Utility and upon request shall make such information available to the Parties.
 - d. **Utility Errors; Net Energy Billing Disputes.** The Parties shall timely assist the Contact Person to address and attempt to correct any Utility errors in determining or allocating Net Energy Billing Credits or credit value. Subject to the process in subsection (d) of Section 5 herein, any Party may initiate a dispute with the Utility at its sole cost and the other party (and Contact Person) will in good faith reasonably cooperate with such disputing party to investigate and remedy a discrepancy between the measured System generation and the Net Energy Billing Credits or credit value issued to Purchaser. In the event resolution of such dispute alters the calculation of the amount of electric energy generated by the System and delivered to the Utility such that it alters the generation and allocation of Net Energy Billing Credits to Purchaser, the Seller shall credit or invoice Purchaser, as applicable, for such revised generation and allocation of credits.
12. **Measurement.** Seller shall install one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System; provided, however, that if a Utility meter is used to measure the Net Energy Billing credits produced by the System and allocated to Purchaser's meters/accounts, then such Utility meter shall be used to calculate the payments due from Purchaser under Section 5 herein. Such meter shall meet revenue grade standards as set by the American National Standards Institute, C12.20 or similar class applicable to the electric utility industry. Seller shall maintain the meter(s) in accordance with industry standards. Seller may provide a remote accessible data logging and reporting system during the Term to enable Seller to remotely record the amount of electric energy generated by the System and Purchaser shall also be given access to the data. During such time the monitoring and/or reporting system ceases to function, but not longer than ninety (90) days, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 5. Within sixty (60) days of invoicing estimated charges, the estimated production shall be compared to actual production based on a physical reading of the on-site meter and Seller shall issue an invoice or credit, as the case may be, to correct overages or underages that occurred during the period invoices were based on estimated production.
13. **Default, Remedies and Damages.**
 - a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the "**Defaulting Party**", the other Party shall be deemed to be the "**Non-Defaulting Party**", and each event of default shall be a "**Default Event**," provided, however, that a Nonappropriation Event pursuant to Section 22 shall not be a Default Event:
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute within ninety (90) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");
 - ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty

(30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, however, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;

- iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization (but not a school reorganization as provided under Title 20-A of the Maine Revised Statutes, as may be amended from time to time), insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
- v. Purchaser prevents Seller from receiving or selling Environmental Attributes (including without limitation RECs if Purchaser has not elected to purchase RECs), to which Seller is entitled under this Agreement and Purchaser fails to cease such prevention within thirty (30) days following receipt of written notice from Seller. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

b. **Remedies.**

- i. **Remedies for Default.** On the occurrence of a Default Event, the Non-Defaulting Party may, after notice of default and failure to cure set forth above, (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages; provided, however, that the Non-Defaulting Party shall first utilize commercially reasonable efforts to mitigate its damages pursuant to Section 13.b.iii. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
- ii. **Damages Upon Termination by Default.** Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
 - A. **Purchaser.** If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to be paid to Seller shall be an amount equal to the product of the Purchaser Percentage and the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty-five percent (35%), for the loss or recapture of (a) the investment tax credit equal to the lesser of thirty percent (30%) of the System value or applicable investment tax credit percentage of the System value based on the Commercial Operation Date; (b) MACRS accelerated depreciation equal to eighty-five percent (85%) of the System value, (c) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of eight percent (8%)) of the projected payments over the Initial Term post-termination, had the Initial Term remained effective for the full Initial Term, and (3) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Initial Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement.

- B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (2) the net present value of the lost cost savings from Net Energy Billing Credits over the remaining term of the Agreement, and (3) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser.
- iii. Obligations Following Termination. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event. If the Non-Defaulting Party mitigates its damages as the result of a Default Event in whole or in part, then the Termination Payment due to the Non-Defaulting Party shall be reduced to account for the mitigation. For illustration only, if Seller is the Non-Defaulting Party and, in order to mitigate its damages, Seller enters into an agreement to sell electrical energy generated by the System to a different purchaser for the remainder of the Initial Term, then the Termination Payment due to Seller shall be reduced by the estimated net present value of payments from such new purchaser. The final Termination Payment amount shall constitute liquidated damages.

14. **Representations, Warranties and Covenants.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following as of the Effective Date:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, or by action of the Party's governing body, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, 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).
- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. **Purchaser's Representations, Warranties and Covenants.** Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:
- i. Authority to Execute. Purchaser has the full right, power, and authority to enter into this Agreement.
- ii. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
- iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to Purchaser's estimated electricity historical usage, is accurate in all material respects.
- iv. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- c. **Seller's Representations, Warranties, and Covenants.** Seller represents and warrants to Purchaser the following as of the Effective Date and covenants that throughout the Term:
- i. Authority to Execute. Seller has the full right, power, and authority to enter into this Agreement.
- ii. Other Agreements. Neither the execution and delivery of this Agreement by Seller nor the performance by Seller of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Seller is a party or by which Seller is bound.

15. **System Damage and Insurance.**

a. **System Damage.**

i. **Seller's Obligations.** If the System is damaged or destroyed, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees to pay for the cost of such restoration of the System.

b. **Insurance Coverage.** At all times during the Term, Seller shall maintain the following insurance:

i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law.

ii. **Reserved.**

c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.

d. **Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. **Ownership.**

a. **Ownership of System.** Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, Environmental Incentives, and Tax Credits, and the System shall remain the personal property of Seller. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

17. **Indemnification and Limitations of Liability.**

a. **General.** To the greatest extent permitted by applicable law, Seller (the "**Indemnifying Party**") shall defend, indemnify and hold harmless Purchaser and its officers, officials, agents and employees (collectively, the "**Indemnified Party**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting (i) from any third party actions relating to the breach of any representation or warranty set forth in Section 14, (ii) from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement, and (iii) from any third party actions relating to decommissioning of the System; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17.a however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17.c.

b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably

satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17.b unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17.b for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17.c.i) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents.

i. **"Hazardous Substance"** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability.**

i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a direct result of a Default Event by Purchaser, such recaptured amount as is attributable to the Default Event shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that a Default Event causes a Party to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales as is attributable to the Default Event shall be direct and not indirect or consequential damages.

ii. **Actual Damages.** Except with respect to indemnification for third party claims pursuant to Section 17 and damages that result from the grossly negligent or willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the sum of Purchaser's actual and projected payments during the first twenty (20) years after the Commercial Operations date under this Agreement. The provisions of this Section 17.d.ii shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within two (2) years after the cause of action accrues.

e. **Liquidated Damages Savings Clause.** THE PARTIES HEREBY AGREE THAT THE PAYMENTS MADE BY THE PARTIES PURSUANT TO SECTIONS 4(B) AND 13(B)(II) SHALL BE TREATED AS LIQUIDATED DAMAGES AND AS SUCH, THE PARTIES AGREE THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE UNDER THE PRESENTLY KNOWN AND ANTICIPATED FACTS AND CIRCUMSTANCES TO ASCERTAIN AND FIX THE AMOUNT OF ACTUAL DAMAGES THAT WOULD BE SUFFERED. THEREFORE, THE PARTIES ACKNOWLEDGE THAT THE PAYMENTS MADE PURSUANT TO SUCH SECTIONS ARE FAIR AND REASONABLE DETERMINATIONS OF THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED, AND THAT SUCH PAYMENTS DO NOT CONSTITUTE A PENALTY.

18. **Force Majeure.**

a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil

strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, however, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.
- c. If a Force Majeure event continues for a period of one hundred twenty (120) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event or thereafter, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

19. Assignment and Financing.

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to its Designated Investment Partner or any Financing Party or any affiliate thereof, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of all of Seller's obligations hereunder by the assignee). In the event of any such assignment, Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement shall transfer all of Seller's rights and obligations under this Agreement to the assignee, and shall not result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has substantially comparable technical experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services substantially comparable to those contemplated by this Agreement, (y) has the financial capability to operate and maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement, and (z) agrees to provide Purchaser with real time access to the System for educational opportunities in Purchaser's curriculum in accordance with Section 9.d. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees; provided, however, that if Purchaser is dissolved or is no longer in existence for any reason, Purchaser shall be deemed to have no successor and this Agreement shall automatically terminate.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 19.a(i)-(iv), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.
- c. **Designated Investment Partner.** Seller's "Designated Investment Partner" is Aligned Climate Capital LLC, and shall include any investment fund managed by Aligned Climate Capital LLC.

- d. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the “**Successor Provider**”). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

20. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser’s business (“**Confidential Information**”) to the other, clearly designates such information as confidential upon transmittal to the receiving Party, and provides to the receiving Party a legal basis on which such designation is made, the receiving Party shall (a) protect, to the extent allowed by law, including without limitation the Maine Freedom of Access Act, Title 1 M.R.S. Chapter 13, the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its officials, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, “**Representatives**”), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions to the extent allowed by law. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party’s need for it has expired or upon the request of the disclosing Party, subject to applicable law including without limitation Maine’s records retention laws and rules.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party, (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality, or (v) in the case of Purchaser, is required to be disclosed pursuant to applicable law, including without limitation the Maine Freedom of Access Act (1 M.R.S.A. §§ 400 et seq.). If disclosure of information is required pursuant to this Section 20.b, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure.

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe this Agreement; provided, however, that Purchaser and its elected officials and employees may refer to and describe this Agreement during public proceedings and in connection with official duties without prior review or approval by Seller. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **Nonappropriation of Funds.** The payment obligations of Purchaser under this Agreement shall constitute a current expense of Purchaser. Any non-substitution, notification, time limitation, or other provision in this Agreement restricting or limiting Purchaser’s right to terminate the Agreement upon a Nonappropriation Event shall be enforceable only to the extent that such restriction or limitation is permitted by applicable law and would not cause Purchaser’s obligation to make payments under the Agreement to be deemed or construed as a debt of Purchaser in contravention of any constitutional, statutory or other legal requirement governing the creation of indebtedness by Purchaser. Nothing in this Agreement shall be deemed a pledge of general tax revenues, funds or monies of Purchaser. Notwithstanding anything contained in this Agreement to the contrary, if a Nonappropriation Event occurs, this Agreement shall automatically terminate on the last day of the fiscal period for which appropriations were received, without penalty or expense to Purchaser of any kind whatsoever, except as to the payments or

portions thereof for which funds have been appropriated and budgeted. Seller may, immediately upon becoming aware of a Nonappropriation Event or upon Purchaser's failure to make a payment under this Agreement as a result of a Nonappropriation Event, re-subscribe, sell, transfer, assign and convey to any third party the electrical energy comprising the Purchaser's Percentage and any and all Net Energy Billing credits and Environmental Attributes associated therewith without penalty or expense to Seller so long as any such re-subscription, sale, transfer, assignment, or conveyance has an effective date as of the automatic termination date, and Purchaser hereby agrees to reasonably cooperate with Seller to effectuate and evidence the termination of this Agreement, the interconnection agreement with the Utility, and any other contract or agreement contemplated herein. All obligations of Purchaser and Seller accruing prior to such automatic termination date will survive any such termination. "**Nonappropriation Event**" means the failure of the "legislative body" (as such term is used in 20-A M.R.S. §§ 1481-A, *et seq.*, as well as any successor provision) of the Purchaser to appropriate funds for the payment Purchaser's obligations under this Agreement.

- a. **Purchaser's Additional Covenant.** Purchaser hereby covenants that the Purchaser will do all things lawfully within its power to obtain and maintain funds from which the Purchaser's payment obligations under this Agreement may be made, including making provision for such payment obligations in each proposed annual budget of the Purchaser submitted for approval in accordance with applicable law and procedures, including without limitation 20-A M.R.S.A. § 1481-A, *et seq.*, as may be amended from time to time.

23. **Miscellaneous Provisions**

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within 30 days after the date that a Party gives written notice of such Dispute to the other Party. If, after such negotiation, the Dispute remains unresolved, and if the Parties mutually agree, Disputes arising in connection with or under this Agreement, may be finally resolved by binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules/Fast Track Procedures. Unless otherwise agreed in writing by the Parties, any Dispute proceeding shall be held in Cumberland County, Maine. If binding arbitration is approved by both Parties in writing, any such decision rendered by the arbitrator shall be final, binding, and non-appealable. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document emailed or electronically sent in PDF form to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination or expiration of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 14 (Representations and Warranties), Section 8.f (No Warranty), Section 15.b (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22 (Nonappropriation of Funds), Section 23.a (Choice of Law), Section 23.b (Arbitration and Attorneys' Fees), Section 23.c (Notices), Section 23.g (Comparative Negligence), Section 23.h (Non-Dedication of Facilities), Section 23.m (Service Contract), Section 23.n (No Partnership) Section 23.o (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 23.q (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however, that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A

Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

- g. **[Intentionally Omitted]**.
- h. **Non-Dedication of Facilities**. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 12 of this Agreement.
- i. **Estoppel**. Either Party hereto, without charge, at any time and from time to time, within ten (10) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- j. **Capacity & Ancillary Services**. As between Purchaser and Seller, Seller shall be entitled to receive any payments for electric capacity (including savings in the form of reduced demand charges) or ancillary services that may become available as a result of the construction or operation of the System. Purchaser shall provide reasonable assistance to Seller in order for Seller to receive such payments, and if Purchaser is deemed to be the owner or provider of such capacity or services, Purchaser shall assign the same to Seller, provided that Seller shall be responsible for the preparation and submission of any necessary applications or other documents. If Purchaser receives any payments in respect of capacity or such services it shall promptly pay them over to Seller.
- k. **No Resale of Electricity**. Except as contemplated by the provisions of this Agreement or required for participation in Net Energy Billing, the electricity purchased by Purchaser from Seller under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Seller, which approval shall not be unreasonably withheld, and Purchaser shall not take any action which would cause Purchaser or Seller to become a utility or public service company.
- l. **Seller Is Not A Utility**. Neither Party shall assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Seller's obligations or performance under this Agreement.
- m. **Service Contract**. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- n. **No Partnership**. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

- o. **Full Agreement, Modification, Invalidity, E-Signature, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be electronically signed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. Electronic signatures shall be the same as handwritten signatures for the purposes of validity, enforceability and admissibility. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- p. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- q. **No Third Party Beneficiaries.** Except for assignees, and Financing Parties permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

End of Exhibit 4

Solar Power Purchase Agreement

This Solar Power Purchase and Net Energy Billing Credit Purchase and Sale Agreement (this "Agreement") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by Seller below (the "Effective Date").

Purchaser:	Town of Topsham	Seller:	Dirt Solar LLC, a Maine corporation
Name and Address	Town of Topsham Attention: Derek Scrapchansky, Town Manager 100 Main Street Topsham, ME 04086	Name and Address	Dirt Solar LLC c/o Aligned Solar Partners 2 LLC c/o Aligned Climate Capital 41 Madison Avenue, 31 st Floor New York NY 100010
Phone	(207) 725-5821	Phone	(202) 669-5977
E-mail		E-mail	brendan@alignedclimatecapital.com

WHEREAS, Seller is in the business of financing, developing, owning, operating, and maintaining solar photovoltaic electric generation facilities;

WHEREAS, Seller is the lessee of the property located at 35 East Ridge Road, Skowhegan, ME 04976 (the "Premises"), and has the right to develop renewable energy generation facilities at the Premises, as defined hereunder;

WHEREAS, Seller plans to finance, install, construct, own, operate, and maintain a solar photovoltaic electric generation facility at the Premises;

WHEREAS, the Purchaser together with other entities that intend to execute an agreement to purchase electrical energy and the Net Energy Billing credits, as set forth in 35-A M.R.S. § 3209-B and Chapter 313 of the Maine Public Utilities Commission Rules ("Net Energy Billing Credits") from the System described below under similar terms and conditions (all together as the "Purchasing Entities") as set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the terms and conditions of the purchase and sale of electrical energy and Net Energy Billing Credits associated with solar generated electric energy from the solar photovoltaic electric generation facility described in Exhibit 2 (the "System") for Purchaser, interconnected to the utility grid as described in Exhibit 2.

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1 Basic Terms and Conditions
- Exhibit 2 System Description
- Exhibit 3 Credit Information – omitted by agreement of the Parties
- Exhibit 4 General Terms and Conditions

IN WITNESS WHEREOF, the undersigned Parties have caused this Agreement to be signed on their behalf by their duly authorized representatives who, by their signatures below, attest that they have the power and authority to bind their respective Party.

Purchaser:	Seller:
Town of Topsham	Dirt Solar LLC
By (signature): _____	By (signature): _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

Exhibit I

Basic Terms and Conditions

1. **Initial Term:** Twenty (20) years, beginning on the Commercial Operation Date.
2. **[Intentionally Omitted]**
3. **Additional Term:** Up to one (1) Additional Term of five (5) years.
4. **Environmental Incentives and Environment Attributes:** Accrue to Seller unless Purchaser elects to purchase Renewable Energy Credits ("RECS") generated by the System from Seller at the combined Energy and REC rate below.
5. **Contract Energy Price per Kilowatt Hour (\$/kWh):** Purchaser elects the Energy Only Rate Energy and REC Combined Rate.

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Contract Year	Estimated Total Energy Production (kWh)	Estimated Purchaser Percentage (kWh)	Energy Only Rate \$/kWh	Energy and REC Combined Rate \$/kWh
1	4,853,490	1,025,000	\$0.085	\$0.090
2	4,829,223	1,019,875	\$0.085	\$0.090
3	4,805,076	1,014,776	\$0.086	\$0.091
4	4,781,051	1,009,702	\$0.088	\$0.093
5	4,757,146	1,004,653	\$0.089	\$0.094
6	4,733,360	999,630	\$0.090	\$0.096
7	4,709,693	994,632	\$0.092	\$0.097
8	4,686,145	989,659	\$0.093	\$0.098
9	4,662,714	984,710	\$0.094	\$0.100
10	4,639,401	979,787	\$0.096	\$0.101
11	4,616,204	974,888	\$0.097	\$0.103
12	4,593,122	970,013	\$0.099	\$0.104
13	4,570,157	965,163	\$0.100	\$0.106
14	4,547,306	960,338	\$0.102	\$0.108
15	4,524,570	955,536	\$0.103	\$0.109
16	4,501,947	950,758	\$0.105	\$0.111
17	4,479,437	946,004	\$0.106	\$0.113
18	4,457,040	941,274	\$0.108	\$0.114
19	4,434,755	936,568	\$0.109	\$0.116
20	4,412,581	931,885	\$0.111	\$0.118
21	4,390,518	927,226	\$0.113	\$0.119
22	4,368,565	922,590	\$0.114	\$0.121
23	4,346,723	917,977	\$0.116	\$0.123
24	4,324,989	913,387	\$0.118	\$0.125
25	4,303,364	908,820	\$0.120	\$0.127

6. **Condition Satisfaction Date:** September 30, 2020
7. **Anticipated Commercial Operation Date:** December 31, 2020
8. **Purchaser Options to Purchase System.** None, or As set forth in Section 1.6.b.
9. **Outside Commercial Operation Date:** December 31, 2021. In the event of any delay outside the reasonable control of the Seller and provided that the Seller is continuing to diligently pursue the permitting, construction, interconnection, and installation of the System, the Outside Commercial Operation Date shall be equitably extended to a date mutually agreed to by the Parties, taking into account the facts, circumstances and length of such delay.

End of Exhibit I

Exhibit 2
System Description

1. **System Location:** 35 East Ridge Road, Skowhegan, ME 04976
2. **System Size:** 3,937 DC kW (panel nameplate capacity); 2,625 kW (inverter rating).
3. **Expected First Year Energy Production (kWh):** 4,853,490 (plus or minus ten (10) percent annually, depending upon weather). Expected energy production shall be de-rated by one half of one percent (0.5%) annually.
4. **Expected Structure:** Ground Mount Roof Mount Parking Structure Other
5. **Expected Module(s):**

<u>Manufacturer/Model</u>	<u>Quantity</u>
REC TwinPeak 2S 375 W, or equivalent, with manufacturer's 25-year warranty	10,500

6. **Expected Inverter(s):**

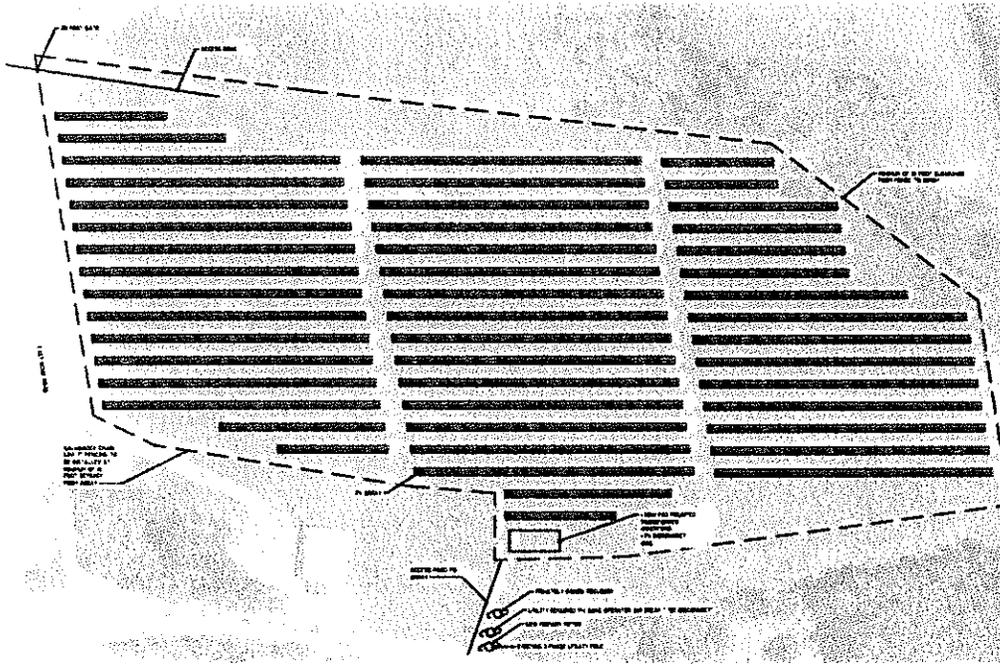
<u>Manufacturer/Model</u>	<u>Quantity</u>
SMA Sunny Highpower Peak 3 125 kW, or equivalent, with manufacturer's 10-year warranty	21

7. **Preliminary System Layout:** See **Exhibit 2, Attachment A**. Subject to Section 10 below, Seller may, at its sole discretion, modify the System design as Seller deems necessary for purposes of permitting, procurement, construction and project implementation.
8. **Utility:** Central Maine Power
9. **Participating Meters:**
 - i. To be provided by Purchaser as part of the Net Energy Billing application pursuant to Exhibit 4 Section 9.b.
10. **Purchaser Percentage:** The Purchaser Percentage shall be Twenty One and 12/100 (21.12) percent of annual electric energy generated by System (the "**Purchaser Percentage**"), provided that the Contract Year 1 Purchaser's Percentage of Total Estimated Production in Exhibit 1 does not exceed 1,025,000 kWh/year ("**Purchaser's Not to Exceed Estimated Amount**"). Seller may alter the design and capacity of the System as Seller deems necessary for permitting, procurement, construction or other purposes, so long as Seller provides written Notice to Purchaser prior to the Commercial Operations Date; provided however, that (i) in the event the System capacity is increased the Purchaser's Percentage shall be adjusted downward to the extent required so that Purchaser's Percentage of the modified Total Estimated Production in Contract Year 1 does not exceed the Purchaser's Not to Exceed Estimated Amount, and (ii) in the event the System capacity is decreased the Purchaser's Percentage of the modified Total Estimated Production in Contract Year 1 is not less than seventy-five percent (75%) of the Purchaser's Not to Exceed Estimated Amount.

Exhibit 2
Attachment A:
Preliminary System Layout

Aerial Image of Premises	See Site Map, below.
Conceptual Drawing of the System	See One Line Drawing, below.
Location of System Components	Solar array to be located at 35 East Ridge Road, Skowhegan, ME 04976 as portrayed in site map. Inverters to be located inside perimeter fence.
Delivery Point	<u>Delivery of energy to Utility, pursuant to interconnection agreement. On utility side of private meter/data logger as shown in One Line Drawing, below.</u>

Preliminary Site Map:



End of Exhibit 2

Exhibit 3
Credit Information

Omitted by agreement of the Parties.

End of Exhibit 3

Exhibit 4
Solar Power Purchase Agreement
General Terms and Conditions

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
2. **Purchase and Sale of Electrical Energy and Net Energy Billing Credits.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, the Purchaser Percentage, as set forth in **Exhibit 2, Section 10**, of electrical energy and Net Energy Billing Credits generated by the System during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the "Term"), in accordance with Section 5 below. Electric energy generated by the System will be delivered to Purchaser at the delivery point identified on **Exhibit 2** (the "Delivery Point"). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point, in proportion with the Purchaser Percentage. In accordance with applicable law, Purchaser may purchase electrical energy and Net Energy Billing Credits from other sources, provided that in all cases Purchaser first and foremost purchases its share of the electrical energy Net Energy Billing Credits from the System as contemplated herein. To the extent Purchaser's Net Energy Billing Credits or payments from the Utility are anticipated to exceed ninety-five percent (95%) of the aggregate cost of Purchaser's electric requirements over a twelve (12) month period, and subject to **Section 9(b)** of this Agreement, the Parties shall negotiate in good faith to recruit one or more Purchasing Entities or a credit-worthy, not-for-profit, school administrative unit, municipal, or quasi-municipal third party entity to purchase a portion of the Purchaser Percentage under the terms and conditions herein. Until such Purchasing Entity(ies) or third party(ies) agrees to assume responsibility for a portion of the Purchaser Percentage or if adding an additional Purchasing Entity would be prohibited by applicable law, Purchaser shall remain obligated to purchase its full Purchaser Percentage. Any purchase, sale, and/or delivery of electric energy generated by the System prior to the Commercial Operation Date shall be treated as limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the delivery of such test energy; provided that Purchaser shall have no obligation to make any payment to Seller for such test energy or its associated Net Energy Billing Credits.
3. **Purchase and Sale of Renewable Energy Credits.** If Purchaser elects the Energy and Renewable Energy Credit (REC) combined purchase option provided in **Exhibit 1**, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, Purchaser's Percentage of the RECs generated by the System for the Contract Year and at the price per kilowatt-hour specified for that year shown in **Exhibit 1**.
4. **Term and Termination.**
 - a. **Initial Term.** The initial term ("Initial Term") of this Agreement shall commence on the Commercial Operation Date (as defined below) and continue for the length of time specified in **Exhibit 1**, unless earlier terminated as provided for in this Agreement. The "Commercial Operation Date" is the date Seller gives Purchaser written notice that the System is mechanically complete, approved to operate in parallel with the Utility's electric distribution system, and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) business days of the date of such notice. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser (the "Utility"), as set forth on **Exhibit 2**. If the actual Commercial Operation Date falls or is estimated to fall after the Outside Commercial Operation Date specified in Section 8 of **Exhibit 1**, as may have been equitably extended pursuant to said **Section 8**, Purchaser may terminate this Agreement by providing thirty (30) days prior written notice to the Seller, without liability for costs or damages or triggering a default under this Agreement, and the termination date in such case shall be the date of said written notice. This Agreement is effective as of the Effective Date and Purchaser's intentional failure to enable Seller to provide the electric energy by preventing it from installing the System or otherwise not performing its obligations hereunder shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.
 - b. **Additional Terms after Contract Year 20.** At mutual agreement of the Parties, prior to the end of Contract Year 20 and subject to Section 9(c) below, either Party may give the other Party written notice of its desire to extend this Agreement. If the Party receiving such notice thereafter gives its consent in writing to extend the Agreement, then this Agreement shall be extended on the terms and conditions set forth herein for one (1) Additional Term, as defined

in Exhibit 1, commencing after the end of Contract Year 20. Notice of intent to continue for such an Additional Term shall be given, if at all, not less than ninety (90) days before the last day of Contract Year 20.

5. **Billing and Payment.**

a. **Monthly Charges.**

- i. **Energy Only Charges.** If Purchaser elects the Energy Only rate in Exhibit 1, Purchaser shall pay Seller monthly (or quarterly, if Seller elects quarterly invoicing under subsection (c) of this Section 5) for the electrical energy and Net Energy Billing Credits associated with the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 (the "Contract Price"), subject to subsection (d) of this Section 5. The periodic payment for such electrical energy and Net Energy Billing Credits will be equal to the applicable \$/kWh rate multiplied by the Purchaser Percentage of the number of kWh of energy generated during each month of the applicable billing period, as measured by the Utility meter as reflected in the Utility report to Seller describing the quantity and value of Net Energy Billing Credits generated for the applicable billing period.
- ii. **Combined Energy and REC Charges.** If Purchaser elects the Energy and REC Combined rate in Exhibit 1, Purchaser shall pay Seller monthly (or quarterly, if Seller elects quarterly invoicing under subsection (c) of this Section 5) for the electrical energy and Net Energy Billing Credits associated with the electric energy and RECs generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 (the "Contract Price"), subject to subsection (d) of this Section 5. The periodic payment for such electrical energy and Net Energy Billing Credits and RECs will be equal to the applicable \$/kWh rate multiplied by the Purchaser Percentage of the number of kWh of energy and RECs generated during each month of the applicable billing period, as measured by the Utility meter as reflected in the Utility report to Seller describing the quantity and value of Net Energy Billing Credits generated for the applicable billing period.

- b. **Monthly Invoices.** Seller shall invoice Purchaser monthly in arrears, either manually or through ACH. Such monthly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the amount of Net Energy Billing Credits allocated to Purchaser, (iii) the applicable Contract Price under this Agreement, and (iv) the total amount due from Purchaser. Seller shall include a copy of the monthly Utility report describing the value, quantity, and allocation of Net Energy Billing Credits to Purchaser's customer account(s) with the Utility.

- c. **Seller's Option for Quarterly Invoicing.** Seller, at Seller's sole option, may elect to invoice Purchaser on a quarterly basis. If Seller exercises the option to invoice quarterly for one or more billing periods, it shall not prohibit Seller from invoicing monthly thereafter. Seller shall provide Purchaser with at least ninety (90) days prior written notice before changing the frequency of invoicing.

- d. **Purchase Contingent on Allocation of Credits by Utility.** The Parties acknowledge and agree that Purchaser's obligations under this Agreement are contingent upon the Utility's acceptance of and allocation of Net Energy Billing Credits to Purchaser's customer account(s) with Utility as set forth in Section 9.b herein. During the term of this Agreement, if the Utility refuses or fails to allocate more than \$500 worth of Net Energy Billing Credits to Purchaser's customer account(s), then Purchaser may request that Seller, and Seller shall, use best efforts to remedy such situation with the Utility within sixty (60) days of such refusal or failure to allocate Net Energy Billing Credits. If Seller fails to engage in best efforts to remedy such refusal or failure by the Utility during such sixty (60) day period and Purchaser has otherwise complied with obligations under Section 9(b) and Section 11(b) herein, then Purchaser shall not be obligated to pay, and Seller shall promptly refund to Purchaser any amount paid under this Agreement, for the electrical energy that did not result in Net Energy Billing Credits allocated to Purchaser's customer account(s).

- i. **Annual Reconciliation of System Meter and Utility Meter.** In addition to the other provisions of this Section 5, annually, within ninety (90) days of the anniversary of the Commercial Operations Date, in the event of a discrepancy between the prior contract year's solar generation (as measured pursuant to Exhibit 4, Section 12 of this Agreement) and the solar electricity exported to the electric grid (as measured by the Utility meter) and the Net Energy Billing Credits allocated to Purchaser's customer account(s) with the Utility, Purchaser may seek a refund from Seller for kilowatt hours of energy Purchaser purchased from Seller that did not qualify for Utility Net Energy Billing Credits. Any such request shall be supported by documented evidence of missing Credits. Upon verification by Seller, Seller and Purchaser shall jointly seek corrective action by the Utility to restore the missing credits. If Utility fails to fully restore the Credits within sixty (60) days of the date the request was filed with the Utility, Seller shall reimburse or credit Purchaser the amount Purchaser paid Seller per kWh for each kWh of electricity that did not result in allocation of Net Energy

Billing Credits to Purchaser. If the Utility later remits such Credits to Purchaser, Purchaser shall then reimburse Seller. This reconciliation process is intended to apply only to kWh of electricity generated by the System and purchased by Purchaser that are not delivered to the Utility electric grid and does not apply to, and Seller shall not be responsible for, malfunctioning of the Utility meter or data collection system, errors in Utility billing or crediting, credits that expire or are unused by Purchaser or Purchaser's failure to properly register or maintain Net Energy Billing accounts with the Utility (unless the responsibility of Seller under this Agreement, including as provided in Section 11 herein).

- e. **Taxes.** Purchaser shall either pay or reimburse Seller for the Purchaser Percentage of any and all taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System up to the Delivery Point, but not the construction, procurement, or design of the System or the interconnection of the System to the Utility's electric distribution system; provided, however, Purchaser will not be required to pay or reimburse Seller for any taxes during periods when Seller fails to deliver electric energy to Purchaser for reasons other than Force Majeure or as a result of Purchaser's acts or omissions. For purposes of this Section 5.d, "Taxes" means any federal, state and local generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include (i) any property taxes or similar taxes on the System or Premises; (ii) any charges, fees, taxes, or the like imposed by ISO New England or associated with metering or settling the energy from the System; (iii) any charges, fees, taxes, or the like associated with station service or electric energy consumed by the System; or (iv) any income taxes or similar taxes imposed on Seller's revenues due to the sale of energy under this Agreement, which shall be Seller's responsibility.
- f. **Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. Any undisputed portion of the invoice amount not paid within the thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) over the prime rate, as published in the Wall Street Journal (but not to exceed the maximum rate permitted by law).

6. **Environmental Attributes and Environmental Incentives.**

- a. Unless otherwise specified in Exhibit I, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits, and Purchaser's purchase of electrical energy and Net Energy Billing Credits associated with electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall promptly pay such amounts over to Seller.
- b. **Press Releases.** To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy generated by the System and shall not submit for publication any such releases without the written approval of Seller. Approval shall not be unreasonably withheld, and Seller's review and approval shall be made in a timely manner to permit Purchaser's timely publication. Except for Contract Years in which Purchaser purchases RECs under the purchase option in Exhibit I, Purchaser hereby acknowledges and consents to Seller's exclusive right to (i) make any claim that electric energy provided to Purchaser under this Agreement was generated by the System, (ii) all claims that Seller is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) all rights, title to and ownership of any and all RECs, credits, certificates, and registrations evidencing or representing any of the foregoing attributes and to take any action necessary for Seller to claim, register, sell or otherwise dispose of such interests.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits provided, however, that "Environmental Attributes" does not mean any electric bill or utility credits related to net metering or Net Energy Billing. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance

with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 6. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

“**Environmental Incentives**” means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority, provided, however, that “Environmental Incentives” does not mean any electric bill or utility credits related to net metering or Net Energy Billing.

“**Governmental Authority**” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission, a state Public Utilities Commission or Independent System Operator), or any arbitrator with authority to bind a party at law.

“**Tax Credits**” means any and all (a) investment tax credits, (b) production tax credits, (c) similar tax credits, grants, or rights to bonus or accelerated depreciation under federal, state or local law relating to the construction, ownership or production of energy from the System; provided, however, that “Tax Credits” does not mean any electric bill or utility credits related to net metering or Net Energy Billing.

7. Conditions to Obligations.

- a. Conditions to Seller's Obligations. Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:
- i. Approval of (A) this Agreement and (B) the Site Lease, and (C) the Construction Agreement (if any) for the System by Seller and Seller's Financing Parties (if any). “**Construction Agreement**” as used in this subsection means an agreement between Seller and any contractor or subcontractor to install all or part of the System;
 - ii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits and/or, in the event the Purchaser elects to purchase RECs, that Seller will be able to transfer, assign and sell to Purchaser such RECs;
 - iii. Receipt of all necessary zoning, land use and building permits, licenses, and approvals for construction of the System; and
 - iv. Execution of all necessary agreements with the Utility for interconnection of the System to the Utility's electric distribution system, and for Net Energy Billing of the electricity generated by the System together with Purchaser's utility accounts.
- b. Failure of Conditions. If any of the conditions listed in subsection (a) or (d) are not satisfied or waived by the Condition Satisfaction Date (or by the Outside Commercial Operation Date with respect to occurrence of the Commercial Operation Date under subsection (d)), then the Parties will attempt in good faith to negotiate for the satisfaction of the failed conditions. If the Parties are unable to reach agreement then either Party may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement; provided, however, in the event Purchaser desires to terminate this Agreement pursuant to this Section due to failure of a condition in paragraphs (iii) or (iv) in subsection (a), and if failure of such condition was outside the reasonable control of the Seller and Seller is continuing to diligently pursue satisfaction of such condition, then prior to such termination, Seller shall have an additional ninety (90) days to satisfy such condition.
- c. Intentionally Omitted.
- d. Conditions to Purchaser's Obligations. Purchaser's obligations under this Agreement are conditioned on the occurrence of the Commercial Operation Date for the System by the Outside Commercial Operation Date specified in Section 8 of Exhibit 1, the System and Purchaser being eligible to participate in Net Energy Billing, and execution of all necessary agreements with the Utility for Net Energy Billing of the electricity generated by the System among

Purchaser's Utility meters and/or accounts. Subject to Seller's obligations in Section 8(a), Purchaser agrees to promptly execute all necessary agreements with the Utility for Net Energy Billing upon presentation of such agreements to Purchaser.

8. **Seller's Rights and Obligations**

- a. **Permits and Approvals**. Seller, with Purchaser's reasonable cooperation with respect to paragraph (ii), shall use commercially reasonable efforts to obtain, at its sole cost and expense:
- i. any zoning, land use, construction, electrical and building permits, licenses and approvals required to construct, install and operate the System;
 - ii. any agreements and approvals from the Utility and/or Public Utilities Commission necessary in order to interconnect the System to the Utility's electric distribution system and engage in Net Energy Billing using energy produced by the System among Purchaser's Utility meters and/or accounts.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals. Seller shall execute and act as counterparty for the standard contract with the Utility that governs Net Energy Billing (currently called a "Commercial or Institutional Customer or Shared Financial Interest Customers Net Energy Billing Tariff Rate Agreement"), unless Purchaser notifies Seller in writing that Purchaser wishes to execute and act as counterparty for such standard contract. Where required, Purchaser shall obtain all such agreements, permits and approvals in Purchaser's name to enable and benefit operation of the System; however, Seller shall pay or reimburse Purchaser for all fees required.

- b. **Standard System Repair and Maintenance**. Seller shall construct and install the System at the Premises. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, and shall ensure that the System, including applicable environmental controls, are properly operated and maintained. Seller shall ensure that vegetation at the Premises is trimmed (including between and around rows of the System) during the Term so as to maximize solar photovoltaic electric generation at the Premises. Seller shall perform all repairs within standard industry time periods. Seller agrees to contract with ReVision Energy Inc., a local contractor, to develop, install, and perform operations and maintenance for the System and shall not replace ReVision Energy Inc. as its contractor without prior consent from Purchaser, which shall not be unreasonably withheld or delayed.
- c. **Breakdown Notice**. Seller shall notify Purchaser within five (5) business days following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Seller shall undertake any required emergency action or repairs as soon as possible.
- d. **Suspension**. Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, however, that Seller shall use commercially reasonable efforts to minimize any interruption in service to the Purchaser. Seller shall provide Purchaser with notice of any such suspension in accord with subsection (c).
- e. **Use of Contractors and Subcontractors**. Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement; provided, however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for its obligations under this Agreement and for the quality of the work performed by its contractors and subcontractors.
- f. **No Warranty**. NO WARRANTY OR REMEDY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE SHALL APPLY. The remedies set forth in this Agreement shall be Purchaser's sole and exclusive remedies for any claim or liability arising out of or in connection with this Agreement, whether arising in contract, tort (including negligence), strict liability or otherwise; provided, however, that this subparagraph shall not prevent transfer of any applicable warranties to Purchasing Entities pursuant to Section 16.

9. **Purchaser's Rights and Obligations**

- a. **Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Notwithstanding anything else herein to the contrary, pursuant to Section 19.a., Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.
- b. **Net Energy Billing.** Purchaser shall promptly take action and execute any documents required to establish net energy billing with the Utility pursuant to 35-A M.R.S. § 3209-B and Chapter 313 of the Rules and Regulations of the Maine Public Utilities Commission, as may be amended from time to time (“**Net Energy Billing**”). Purchaser shall receive the value of any credits or payments from the Utility that may be available under Net Energy Billing or similar program for the Purchaser’s Percentage of electric energy generated by the System. It is the intent of the Parties that (i) Purchaser’s purchase of electrical energy under this Agreement will enable Purchaser to receive credits or payments from the Utility through Net Energy Billing, (ii) title to the electrical energy will ultimately pass to Utility at the Delivery Point to enable Purchaser to receive Net Energy Billing Credits, and (iii) through its purchase of electrical energy under this Agreement, Purchaser will incur no obligations or charges with respect to energy market participation or transmission or distribution of electrical energy from the System. If the foregoing intent cannot be accomplished during the Term of the Agreement, the Parties agree to negotiate in good faith to modify this Agreement to accomplish the foregoing intent without change to the economic terms of this Agreement.
- c. **Net Energy Billing After Twenty Years.**
- i. **Eligibility.** If, twenty (20) years after the Commercial Operation Date or any time thereafter, either the Purchaser or the System is not eligible to participate in Net Energy Billing, then Purchaser shall have the right to terminate this Agreement in its sole discretion without further liability to either Party except with respect to payment of amounts accrued prior to termination. Such termination shall be effective thirty (30) days after receipt by Seller of written notice of termination from Purchaser.
- ii. **Value of Net Energy Billing Credits.** If, twenty (20) years after the Commercial Operation Date or any time thereafter, the Purchaser and System are eligible to participate in Net Energy Billing but the rate used to calculate the value of Purchaser’s credits under Net Energy Billing is reduced by at least twenty percent (20%) compared to the average rate used during the twentieth (20th) Contract Year, then the Parties shall, within thirty (30) days following receipt by Seller from Purchaser of notice of such material change, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Purchaser shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.
- d. **Decommissioning.** Purchaser shall have no obligation or liability with respect to decommissioning associated with the System.

10. **Change in Law.**

“**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, including without limitation Net Energy Billing; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which, in the case of any of (i), (ii) or (iii), establishes requirements affecting (x) owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller’s obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations or (y) the Purchaser’s or the System’s eligibility to participate in Net Energy Billing; provided, however, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement or on the Purchaser’s or the System’s eligibility to participate in Net Energy Billing, then the Parties shall, within thirty (30) days following receipt by either Party from the other Party of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller or Purchaser (with respect to condition (y) in the above paragraph) shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

11. **Net Energy Billing Administration.** Subject to Section 8(a), Seller shall be responsible for execution of and ongoing administration of the customer Net Energy Billing agreement with the Utility (currently called a "Commercial or Institutional Customer or Shared Financial Interest Customers Net Energy Billing Tariff Rate Agreement"), including but not limited to the requirements of the Net Energy Billing Rules and the following:

- a. **Contact Person.** Seller shall be the contact person responsible for all communications with the Utility regarding the Net Energy Billing arrangement ("Contact Person"), including all actions required of the Contact Person pursuant to the Net Energy Billing Rules and/or the customer Net Energy Billing agreement with the Utility. The Parties each agree to assist the Contact Person in obtaining all data, meter information, permits and approvals needed, and to promptly and timely execute all agreements with the Utility as necessary to continue and maintain the Net Energy Billing arrangement.
- b. **Net Energy Billing Updates.** Purchaser shall provide the Contact Person with written notice of any requested changes to be conveyed to the Utility regarding its meters, accounts or account information, or the allocation of Net Energy Billing Credits among Purchaser's meters and accounts. Purchaser shall allow the Contact Person at least fifteen (15) business days to convey changes to the Utility and for the Utility to respond. Purchaser shall be solely responsible for the timeliness of changes to its Net Energy Billing meters and accounts and for the accuracy of any such changes and shall pay in full for Net Energy Billing Credits that would have been properly credited to Purchaser's meters and accounts but for Purchaser's errors, delays or mistakes in the original Net Energy Billing Credit program application or updates to the customer Net Energy Billing agreement with the Utility.
- c. **Records Maintenance.** The Contact Person and each Party shall maintain for a period of at least two years all records related to the customer Net Energy Billing agreement with the Utility and upon request shall make such information available to the Parties.
- d. **Utility Errors; Net Energy Billing Disputes.** The Parties shall timely assist the Contact Person to address and attempt to correct any Utility errors in determining or allocating Net Energy Billing Credits or credit value. Subject to the process in subsection (d) of Section 5 herein, any Party may initiate a dispute with the Utility at its sole cost and the other party (and Contact Person) will in good faith reasonably cooperate with such disputing party to investigate and remedy a discrepancy between the measured System generation and the Net Energy Billing Credits or credit value issued to Purchaser. In the event resolution of such dispute alters the calculation of the amount of electric energy generated by the System and delivered to the Utility such that it alters the generation and allocation of Net Energy Billing Credits to Purchaser, the Seller shall credit or invoice Purchaser, as applicable, for such revised generation and allocation of credits.

12. **Measurement.** Seller shall install one or more meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System; provided, however, that if a Utility meter is used to measure the Net Energy Billing credits produced by the System and allocated to Purchaser's meters/accounts, then such Utility meter shall be used to calculate the payments due from Purchaser under Section 5 herein. Such meter shall meet revenue grade standards as set by the American National Standards Institute, C12.20 or similar class applicable to the electric utility industry. Seller shall maintain the meter(s) in accordance with industry standards. Seller may provide a remote accessible data logging and reporting system during the Term to enable Seller to remotely record the amount of electric energy generated by the System and Purchaser shall also be given access to the data. During such time the monitoring and/or reporting system ceases to function, but not longer than ninety (90) days, Seller may reasonably estimate the amount of electric energy that was generated and invoice Purchaser for such amount in accordance with Section 5. Within sixty (60) days of invoicing estimated charges, the estimated production shall be compared to actual production based on a physical reading of the on-site meter and Seller shall issue an invoice or credit, as the case may be, to correct overages or underages that occurred during the period invoices were based on estimated production.

13. **Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the "Defaulting Party", the other Party shall be deemed to be the "Non-Defaulting Party", and each event of default shall be a "Default Event," provided, however, that a Nonappropriation Event pursuant to Section 22 shall not be a Default Event:
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute within ninety (90) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("Payment Default");
 - ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty

(30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, however, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;

- iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization (but not a school reorganization as provided under Title 20-A of the Maine Revised Statutes, as may be amended from time to time), insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
- v. Purchaser prevents Seller from receiving or selling Environmental Attributes (including without limitation RECs if Purchaser has not elected to purchase RECs), to which Seller is entitled under this Agreement and Purchaser fails to cease such prevention within thirty (30) days following receipt of written notice from Seller. Such Default Event shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

b. **Remedies.**

- i. **Remedies for Default.** On the occurrence of a Default Event, the Non-Defaulting Party may, after notice of default and failure to cure set forth above, (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages; provided, however, that the Non-Defaulting Party shall first utilize commercially reasonable efforts to mitigate its damages pursuant to Section 13.b.iii. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event.
- ii. **Damages Upon Termination by Default.** Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "**Termination Payment**"):
 - A. **Purchaser.** If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to be paid to Seller shall be an amount equal to the product of the Purchaser Percentage and the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty-five percent (35%), for the loss or recapture of (a) the investment tax credit equal to the lesser of thirty percent (30%) of the System value or applicable investment tax credit percentage of the System value based on the Commercial Operation Date; (b) MACRS accelerated depreciation equal to eighty-five percent (85%) of the System value, (c) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of eight percent (8%)) of the projected payments over the Initial Term post-termination, had the Initial Term remained effective for the full Initial Term, and (3) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Initial Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement.

- B. Seller. If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility; (2) the net present value of the lost cost savings from Net Energy Billing Credits over the remaining term of the Agreement, and (3) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser.
- iii. Obligations Following Termination. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event. If the Non-Defaulting Party mitigates its damages as the result of a Default Event in whole or in part, then the Termination Payment due to the Non-Defaulting Party shall be reduced to account for the mitigation. For illustration only, if Seller is the Non-Defaulting Party and, in order to mitigate its damages, Seller enters into an agreement to sell electrical energy generated by the System to a different purchaser for the remainder of the Initial Term, then the Termination Payment due to Seller shall be reduced by the estimated net present value of payments from such new purchaser. The final Termination Payment amount shall constitute liquidated damages.

14. Representations, Warranties and Covenants.

- a. General Representations and Warranties. Each Party represents and warrants to the other the following as of the Effective Date:
- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, or by action of the Party's governing body, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, 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).
 - ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.
- b. Purchaser's Representations, Warranties and Covenants. Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:
- i. Authority to Execute. Purchaser has the full right, power, and authority to enter into this Agreement.
 - ii. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
 - iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to Purchaser's estimated electricity historical usage, is accurate in all material respects.
 - iv. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- c. Seller's Representations, Warranties, and Covenants. Seller represents and warrants to Purchaser the following as of the Effective Date and covenants that throughout the Term:
- i. Authority to Execute. Seller has the full right, power, and authority to enter into this Agreement.
 - ii. Other Agreements. Neither the execution and delivery of this Agreement by Seller nor the performance by Seller of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Seller is a party or by which Seller is bound.

15. **System Damage and Insurance.**

a. **System Damage.**

- i. **Seller's Obligations.** If the System is damaged or destroyed, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees to pay for the cost of such restoration of the System.

b. **Insurance Coverage.** At all times during the Term, Seller shall maintain the following insurance:

- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (C) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law.

ii. **Reserved.**

- c. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party.

- d. **Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

- e. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

16. **Ownership.**

- a. **Ownership of System.** Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes, Environmental Incentives, and Tax Credits, and the System shall remain the personal property of Seller. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

17. **Indemnification and Limitations of Liability.**

- a. **General.** To the greatest extent permitted by applicable law, Seller (the "**Indemnifying Party**") shall defend, indemnify and hold harmless Purchaser and its officers, officials, agents and employees (collectively, the "**Indemnified Party**"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "**Liabilities**") resulting (i) from any third party actions relating to the breach of any representation or warranty set forth in Section 14, (ii) from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement, and (iii) from any third party actions relating to decommissioning of the System; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17.a however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17.c.

- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "**Claim**"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably

satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17.b unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17.b for any Claim for which such notice is not provided if that the failure to give notice prejudices the Indemnifying Party.

c. **Environmental Indemnification**. Seller shall indemnify, defend and hold harmless all Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17.c.i) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents.

i. **"Hazardous Substance"** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

d. **Limitations on Liability**.

i. **No Consequential Damages**. Except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (i) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a direct result of a Default Event by Purchaser, such recaptured amount as is attributable to the Default Event shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that a Default Event causes a Party to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales as is attributable to the Default Event shall be direct and not indirect or consequential damages.

ii. **Actual Damages**. Except with respect to indemnification for third party claims pursuant to Section 17 and damages that result from the grossly negligent or willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the sum of Purchaser's actual and projected payments during the first twenty (20) years after the Commercial Operations date under this Agreement. The provisions of this Section 17.d.ii shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within two (2) years after the cause of action accrues.

e. **Liquidated Damages Savings Clause**. THE PARTIES HEREBY AGREE THAT THE PAYMENTS MADE BY THE PARTIES PURSUANT TO SECTIONS 4(B) AND 13(B)(II) SHALL BE TREATED AS LIQUIDATED DAMAGES AND AS SUCH, THE PARTIES AGREE THAT IT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE UNDER THE PRESENTLY KNOWN AND ANTICIPATED FACTS AND CIRCUMSTANCES TO ASCERTAIN AND FIX THE AMOUNT OF ACTUAL DAMAGES THAT WOULD BE SUFFERED. THEREFORE, THE PARTIES ACKNOWLEDGE THAT THE PAYMENTS MADE PURSUANT TO SUCH SECTIONS ARE FAIR AND REASONABLE DETERMINATIONS OF THE AMOUNT OF DAMAGES WHICH WOULD BE SUFFERED, AND THAT SUCH PAYMENTS DO NOT CONSTITUTE A PENALTY.

18. **Force Majeure**

a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil

strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

- b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, however, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.
- c. If a Force Majeure event continues for a period of one hundred twenty (120) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event or thereafter, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid).

19. **Assignment and Financing.**

- a. **Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, without the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to its Designated Investment Partner or any Financing Party or any affiliate thereof, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Seller, (iii) assign this Agreement and the System to any entity through which Seller is obtaining financing or capital for the System and (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of all of Seller's obligations hereunder by the assignee). In the event of any such assignment, Seller shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Seller's right and/or obligations under this Agreement shall transfer all of Seller's rights and obligations under this Agreement to the assignee, and shall not result in any change to Purchaser's rights and obligations under this Agreement. Purchaser's consent to any other assignment shall not be unreasonably withheld if Purchaser has been provided with reasonable proof that the proposed assignee (x) has substantially comparable technical experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services substantially comparable to those contemplated by this Agreement, (y) has the financial capability to operate and maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement, and (z) agrees to provide Purchaser with real time access to the System for educational opportunities in Purchaser's curriculum in accordance with Section 9.d. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees; provided, however, that if Purchaser is dissolved or is no longer in existence for any reason, Purchaser shall be deemed to have no successor and this Agreement shall automatically terminate.
- b. **Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 19.a(i)-(iv), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.
- c. **Designated Investment Partner.** Seller's "Designated Investment Partner" is Aligned Climate Capital LLC, and shall include any investment fund managed by Aligned Climate Capital LLC.

- d. **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Purchaser agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

20. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Purchaser's business ("**Confidential Information**") to the other, clearly designates such information as confidential upon transmittal to the receiving Party, and provides to the receiving Party a legal basis on which such designation is made, the receiving Party shall (a) protect, to the extent allowed by law, including without limitation the Maine Freedom of Access Act, Title 1 M.R.S. Chapter 13, the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this Agreement, including but not limited to obtaining financing for the System. Notwithstanding the above, a Party may provide such Confidential Information to its officials, officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, and potential assignees of this Agreement (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information). Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions to the extent allowed by law. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party, subject to applicable law including without limitation Maine's records retention laws and rules.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this Agreement, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party, (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality, or (v) in the case of Purchaser, is required to be disclosed pursuant to applicable law, including without limitation the Maine Freedom of Access Act (1 M.R.S.A. §§ 400 et seq.). If disclosure of information is required pursuant to this Section 20.b, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure.

21. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe this Agreement; provided, however, that Purchaser and its elected officials and employees may refer to and describe this Agreement during public proceedings and in connection with official duties without prior review or approval by Seiler. Neither Party shall make any press release or public announcement of the specific terms of this Agreement (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

22. **Nonappropriation of Funds.** The payment obligations of Purchaser under this Agreement shall constitute a current expense of Purchaser. Any non-substitution, notification, time limitation, or other provision in this Agreement restricting or limiting Purchaser's right to terminate the Agreement upon a Nonappropriation Event shall be enforceable only to the extent that such restriction or limitation is permitted by applicable law and would not cause Purchaser's obligation to make payments under the Agreement to be deemed or construed as a debt of Purchaser in contravention of any constitutional, statutory or other legal requirement governing the creation of indebtedness by Purchaser. Nothing in this Agreement shall be deemed a pledge of general tax revenues, funds or monies of Purchaser. Notwithstanding anything contained in this Agreement to the contrary, if a Nonappropriation Event occurs, this Agreement shall automatically terminate on the last day of the fiscal period for which appropriations were received, without penalty or expense to Purchaser of any kind whatsoever, except as to the payments or

portions thereof for which funds have been appropriated and budgeted. Seller may, immediately upon becoming aware of a Nonappropriation Event or upon Purchaser's failure to make a payment under this Agreement as a result of a Nonappropriation Event, re-subscribe, sell, transfer, assign and convey to any third party the electrical energy comprising the Purchaser's Percentage and any and all Net Energy Billing credits and Environmental Attributes associated therewith without penalty or expense to Seller so long as any such re-subscription, sale, transfer, assignment, or conveyance has an effective date as of the automatic termination date, and Purchaser hereby agrees to reasonably cooperate with Seller to effectuate and evidence the termination of this Agreement, the interconnection agreement with the Utility, and any other contract or agreement contemplated herein. All obligations of Purchaser and Seller accruing prior to such automatic termination date will survive any such termination. "Nonappropriation Event" means the failure of the "legislative body" (as such term is used in 20-A M.R.S. §§ 1481-A, *et seq.*, as well as any successor provision) of the Purchaser to appropriate funds for the payment Purchaser's obligations under this Agreement.

- a. **Purchaser's Additional Covenant.** Purchaser hereby covenants that the Purchaser will do all things lawfully within its power to obtain and maintain funds from which the Purchaser's payment obligations under this Agreement may be made, including making provision for such payment obligations in each proposed annual budget of the Purchaser submitted for approval in accordance with applicable law and procedures, including without limitation 20-A M.R.S.A. § 1481-A, *et seq.*, as may be amended from time to time.

23. Miscellaneous Provisions

- a. **Choice of Law.** The law of the state where the System is located shall govern this Agreement without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within 30 days after the date that a Party gives written notice of such Dispute to the other Party. If, after such negotiation, the Dispute remains unresolved, and if the Parties mutually agree, Disputes arising in connection with or under this Agreement, may be finally resolved by binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules/Fast Track Procedures. Unless otherwise agreed in writing by the Parties, any Dispute proceeding shall be held in Cumberland County, Maine. If binding arbitration is approved by both Parties in writing, any such decision rendered by the arbitrator shall be final, binding, and non-appealable. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document emailed or electronically sent in PDF form to it as an original document.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination or expiration of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 14 (Representations and Warranties), Section 8.f (No Warranty), Section 15.b (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 20 (Confidentiality and Publicity), Section 22 (Nonappropriation of Funds), Section 23.a (Choice of Law), Section 23.b (Arbitration and Attorneys' Fees), Section 23.c (Notices), Section 23.g (Comparative Negligence), Section 23.h (Non-Dedication of Facilities), Section 23.m (Service Contract), Section 23.n (No Partnership) Section 23.o (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 23.q (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however, that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A

Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

g. [Intentionally Omitted].

h. Non-Dedication of Facilities. Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 12 of this Agreement.

i. Estoppel. Either Party hereto, without charge, at any time and from time to time, within ten (10) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

j. Capacity & Ancillary Services. As between Purchaser and Seller, Seller shall be entitled to receive any payments for electric capacity (including savings in the form of reduced demand charges) or ancillary services that may become available as a result of the construction or operation of the System. Purchaser shall provide reasonable assistance to Seller in order for Seller to receive such payments, and if Purchaser is deemed to be the owner or provider of such capacity or services, Purchaser shall assign the same to Seller, provided that Seller shall be responsible for the preparation and submission of any necessary applications or other documents. If Purchaser receives any payments in respect of capacity or such services it shall promptly pay them over to Seller.

k. No Resale of Electricity. Except as contemplated by the provisions of this Agreement or required for participation in Net Energy Billing, the electricity purchased by Purchaser from Seller under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Seller, which approval shall not be unreasonably withheld, and Purchaser shall not take any action which would cause Purchaser or Seller to become a utility or public service company.

l. Seller Is Not A Utility. Neither Party shall assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Seller's obligations or performance under this Agreement.

m. Service Contract. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

n. No Partnership. No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

- o. **Full Agreement, Modification, Invalidity, E-Signature, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be electronically signed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. Electronic signatures shall be the same as handwritten signatures for the purposes of validity, enforceability and admissibility. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.
- p. **Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- q. **No Third Party Beneficiaries.** Except for assignees, and Financing Parties permitted under Section 19, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

End of Exhibit 4

Board of Selectmen Meeting

For the date of: 05/21/2020

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number: 20-33

(If this is Unfinished Business, please remember to research and enter the original agenda number above. For Regular Agenda items, the Secretary will assign a number.)

Brief Title of consent or Agenda Item: Consideration and any appropriate action to discuss temporary signage during the current COVID-19 pandemic.

Brief Description of Consent or Agenda Item:

Submitted by: Derek Scrapchansky, Town Manager

Date: 05-13-2020

Board of Selectmen Meeting

For the date of: 05/21/2020

Type of Item:

- Board or Committee Presentation
- Consent Agenda Item
- Public Hearing
- Unfinished Business
- Old Business
- New Business
- Executive Session
- Workshop

Type of Submission:

- Regular Submission
- Additional Agenda Item
- Additional Information

Agenda Number 20-34

(If this is unfinished business, please remember to research and enter the original agenda number above. For regular agenda items, the secretary will assign a number.)

Brief Title of consent or Agenda Item: Consideration and any appropriate action to enter into executive session pursuant to 1 M.R.S.A. § 405 (6) (A) to discuss a grievance matter.

Brief Description of Consent or Agenda Item:

Submitted by Derek Scrapchansky, Town Manager

Date: 05-15-2020