

CREDIT PURCHASE AND SALE AGREEMENT

This Credit Purchase and Sale Agreement (“*Agreement*”) is entered into as of [REDACTED], 202[REDACTED] (the “*Effective Date*”) by and between **Locke Brook Solar, LLC**, a Delaware limited liability company (“*Seller*”), and **Town of Townsend**, a Massachusetts Municipality (“*Buyer*”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, Seller finances, develops, owns, operates and maintains solar (PV) electric generation facilities; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, the Credits associated with Energy generated by the Facility, but not the Environmental Attributes or Tax Attributes, during the Term, subject to the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, warranties, covenants and conditions herein, and the Exhibits attached hereto, Seller and Buyer agree as follows.

ARTICLE I DEFINITIONS

When used in this Agreement, capitalized terms shall have the meanings given in the Glossary of Terms, attached hereto and incorporated herein, unless a different meaning is expressed or clearly indicated by the context. Words defined in the Glossary of Terms which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

ARTICLE II TERM

2.1 Term. The Agreement term (the “*Term*”) shall begin on the Effective Date and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operations Date (the “*Termination Date*”), or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.

2.2 Early Termination. This Agreement may be terminated before the Termination Date (the “*Early Termination Date*”):

(a) by Seller, upon thirty (30) days’ notice to Buyer, if Seller, in its sole discretion, determines that (i) prior to the Construction Commencement Date, it should not construct the Facility or (ii) after the Construction Commencement Date it should abandon the Facility as a result of an event of Force Majeure;

(b) by Seller, in accordance with section 4.1 (regarding conditions precedent);

- (c) by either Party, in accordance with Section 4.2 (regarding regulatory change);
- (d) by the Buyer if the Commercial Operation Date does not occur on or before _____, 2021; subject to, for the avoidance of doubt, extensions on a day-for-day basis to account for any delays based on or related to force majeure events including extensions on a day-for-day basis to account for any delays caused, through no fault of Seller's, by the Utility in the construction of upgrades to its distribution grid to accommodate the Facility or interconnection of the Facility; or
- (e) pursuant to Section 10.3 (regarding financing).

Upon early termination of this Agreement in accordance with this Section 2.2, each Party shall discharge by performance all obligations due to the other Party that arose before the Early Termination Date and the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

ARTICLE III TITLE; COMMERCIAL OPERATION DATE

3.1 Title.

- (a) Under no circumstances shall the Buyer have or retain title to the Facility, Energy, Environmental Attributes, Tax Attributes, generation capacity and ancillary services produced or associated with the Energy or the Facility. If Buyer is deemed to be the owner or provider of any of the above, Buyer shall assign them to Seller, and if Buyer receives any payments for them it shall promptly pay them to Seller. This Section 3.1(a) shall survive the termination of this Agreement.
- (b) As between Seller and Buyer, title to, and risk of loss of, the Credits will pass from Seller to Buyer upon allocation of the Credits to Buyer's Utility Account(s).

3.2 Notice of Commercial Operations Date. Seller shall promptly notify Buyer in writing of the Commercial Operation Date.

ARTICLE IV CONDITIONS PRECEDENT; REGULATORY CHANGE

4.1 Conditions Precedent. Seller's obligations under this agreement are subject to the Facility's connection to the Utility pursuant to any laws, regulations or tariffs qualifying the Facility to generate Credits. Buyer agrees that it will, in good faith, execute any reasonably requested documentation required by any Governmental Authority, including a "SMART Participant Customer Disclosure Form". If the Facility does not so qualify, or if the Facility loses its qualification through no fault of the Seller, then Seller may, but shall not be obligated to, terminate this Agreement by delivering notice to the Buyer. If this Agreement is terminated pursuant to this Section 4.1, the termination shall be effective as of the delivery of such

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notice without further liability of the Parties to each other, provided that the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice and Section 11.1 (Disputes) shall continue to apply notwithstanding such termination.

4.2 Obligation to Modify Agreement Pursuant to Actions by Governmental Authority. Upon a Governmental Authority order, decision, or regulation implementation, or upon the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the Utility, that (i) materially restricts Seller's ability to deliver Credits to Buyer or to fulfill its other obligations under this Agreement, (ii) materially restricts Buyer's ability to receive Credits, or (iii) disallows the Facility's qualification under laws, regulations or tariffs qualifying the Facility to generate Credits, as appropriate, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent possible, and shall use commercially reasonable efforts to conform such amendment to restore the economic benefit to each Party and to do so in a timely fashion. If the Parties, negotiating in good faith, cannot agree concerning conforming to such actions, then either Party may terminate this Agreement. The imposition of an MMRC or any similar charge shall not trigger the obligation to amend this Agreement under this Section 4.2.

ARTICLE V PURCHASE AND SALE OF CREDITS; GOVERNMENTAL CHARGES

5.1 Sale and Purchase of Credits. Beginning on the Commercial Operations Date and continuing throughout the Term, Seller agrees to sell to Buyer, and Buyer agrees to accept from Seller and to pay the Price to Seller for the Quantity of Credits associated with the Energy, as determined by the Meter. Price is stated on Exhibit A, attached hereto and incorporated herein.

5.2 Delivery; Indemnification. Seller shall, in its sole discretion, direct the Utility to deliver the Credits to Buyer under either the Net Metering Program.

- (a) To deliver the Credits to Buyer, Seller shall direct the Utility to allocate the Credits purchased by Buyer under this Agreement to Buyer's Utility Account(s) (as determined by a process established by the Tariff).
- (b) Buyer understands that the Credits delivered to Buyer in any particular month will be reflected on Buyer's Utility Statement as a monetary credit amount and not as an electricity quantity; and that such credit will be reflected on the Utility Statement according to the Utility's billing cycle, which may be up to approximately two (2) months after the Facility generates the Energy associated with the Credits.

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- (c) Buyer acknowledges that Seller is relying on commitments made by Buyer under this Agreement for the Facility to receive and maintain qualification as a Community Shared Solar Tariff Generation Unit under the Massachusetts SMART Program. Buyer agrees that it shall not take any action that would cause the Facility not to be qualified as a Community Shared Solar Tariff Generation Unit, and shall cooperate with Seller to assure the Facility's continued qualification.

Seller acknowledges that the Buyer is relying on commitments made by the Seller under this Agreement for the Buyer to receive the credits as it prepares long term financial planning for the Buyer. Seller agrees that it shall take commercially reasonable efforts to assure the facility is producing energy at its highest output possible and it will continue to do so in order to ensure that the Buyer receives the greatest amount of credits to continue reliance on the budgetary benefits of this agreement.

- (d) Seller will attempt to correct any Utility allocation error and Buyer agrees to cooperate in a timely manner as needed.

5.3 Governmental Charges.

- (a) Seller is responsible for any Governmental Charges attributable to the sale of Credits hereunder, whether imposed before, upon or after the allocation and delivery of Credits to Buyer.
- (b) The Parties shall use commercially reasonable efforts to administer this Agreement and implement its provisions to minimize Governmental Charges. If any Credits sales are exempted from or not subject to one or more Governmental Charges, the relevant Party shall, promptly upon the other Party's written request, provide the other Party with all necessary documentation to evidence the exemption or exclusion.

ARTICLE VI PAYMENT

6.1 Payment.

- (a) Beginning with the first Billing Period that Seller delivers Energy to the Utility, Seller shall provide an invoice to Buyer (the "***Invoice***") for the amount due based on the Price multiplied by the Quantity.
- (b) Buyer shall remit payment of the full amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to Seller) to the account designated by Seller within forty five (45) days following Buyer's receipt of each Invoice. If Buyer does not pay an Invoice within forty five (45) days of receiving the Invoice, the amount due on the Invoice shall bear interest from the date on which the payment was due, through and including the date Seller receives the payment. The annual Interest accrual rate is the Interest Rate.

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- (c) Before the Commercial Operations Date, Buyer shall take all actions necessary to allow Seller to electronically access, for the Term, the Utility Statement(s) and account information solely for purposes of fulfilling Seller's obligations under this Agreement.
- (d) The Parties shall resolve Invoice disputes according to Section 6.3 (Invoice Disputes).

6.2 Records and Audits.

- (a) Seller shall maintain accurate operating records in order to properly administer this Agreement.
- (b) Each Party shall keep, for a period of not less than two (2) years after the expiration or termination of any transaction, or longer as required under the Massachusetts Public Records Law, records sufficient to permit the other Party to verify the accuracy of billing statements, invoices, charges, computations and payments for the transaction. During these periods each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records regarding the transactions during the other Party's normal business hours.

6.3 Invoice Disputes; Invoice Discrepancies.

- (a) If a Party, in good faith, disputes an Invoice, including disputes under Section 6.3(b), the disputing Party shall promptly notify the other Party of the basis for the dispute and Buyer shall pay the undisputed portion of the Invoice no later than the due date. Any required payment shall be made within seven (7) Business Days of resolving the dispute. Any overpayments shall be returned by the receiving Party promptly following the request or, deducted from subsequent payments with interest accrued at the Interest Rate, at the option of the overpaying Party. The Parties may only dispute amounts owed or paid within twelve (12) calendar months from the Invoice date. If the Parties are unable to resolve an Invoice dispute under this Section, the Parties shall follow the procedure set forth in Article 11 (regarding dispute resolution).
- (b) If the Parties determines that the value of Credits reflected on an Invoice is different than the value of Credits allocated to Buyer's Utility Account(s), and that the discrepancy is due to an issue related to the Meter, Seller shall use commercially reasonable efforts to resolve the issue with the Utility. If the discrepancy is due to an accounting or administrative error by the Utility, Buyer, as the Utility Account holder, and with Seller's cooperation, shall resolve the discrepancy with the Utility.

**ARTICLE VII
REPRESENTATIONS, WARRANTIES, COVENANTS**

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7.1 Each Party represents and warrants to the other Party as follows.

- (a) The Party is duly organized, validly existing, and in good standing under the laws of the state in which the Party is organized and is authorized to conduct business in the Commonwealth of Massachusetts.
- (b) The Party has full legal capacity to enter into and perform this Agreement.
- (c) The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.
- (d) It shall perform its obligations under this Agreement in material compliance with Applicable Law.

Both parties shall provide to the other party prior to the execution hereof, evidence of due authorization to enter into this agreement and a certificate of good standing and certificate to undertake business in Massachusetts from the Secretary of State's Office.

7.2 The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is a "forward merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Seller is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

7.3 Buyer shall provide to Seller, on or prior to the Effective Date and annually thereafter, a copy of the most recent years financial statements for Buyer.

ARTICLE VIII TERMINATION; DEFAULT

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

- (a) The Party fails to make any material payment due under this Agreement within thirty (30) days after such payment is due unless the specific amount of the payment not made is being disputed.
- (b) The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; provided, however, if the defaulting Party proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party's time to do so shall be extended by the time reasonably necessary to

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cure the same.

(c) Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.

(d) The Party:

i. is dissolved (other than pursuant to a consolidation, amalgamation or merger);

ii. makes a general assignment, arrangement or composition with or for the benefit of its creditors; or

iii. (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) commences a voluntary case under any bankruptcy law; (D) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (E) acquiesces in, or fails to contest in a timely manner, any petition filed against it in an involuntary case under bankruptcy law or seeking to dissolve it under other applicable law; or (F) takes any action authorizing its dissolution.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within a reasonable time after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

8.3 Termination for Default.

(a) Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, subject to the rights to cure of Section 8.1 and Section 10.2(a)(iii)(A), and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.

(b) If this Agreement is terminated due to an Event of Default, Seller shall have no

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further obligation to deliver, and Buyer shall have no further obligation to purchase, Credits generated after that termination date.

ARTICLE IX
REMEDIES; LIMITATION OF LIABILITY; WAIVER

9.1 Remedies. Subject to the limitations set forth in this Agreement, upon an Event of Default by Buyer, Seller may sell Credits produced by the Facility to persons other than Buyer, and recover from Buyer any loss in revenues resulting from such sales; and/or pursue other remedies available at law or in equity. Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party shall take commercially reasonable actions available to it to mitigate damages it may incur as a result of the other Party's non-performance under this Agreement.

9.2 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

9.3 Waivers.

(a) No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer unless the waiver is in writing and signed by the Party against whom it is to be enforced or such Party's agent. A Party's consent or approval to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. A Party's failure to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any Party's right or remedy specified herein or any other right or remedy a Party may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

(b) Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any

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right or defense that Seller or Buyer may be entitled to exercise hereunder.

ARTICLE X ASSIGNMENT

10.1 Prior Written Consent. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that without consent of Buyer, Seller (i) may assign its rights and obligations hereunder to an Affiliate of Seller and (ii) may sell or collaterally assign this Agreement in accordance with Section 10.2. In the event of such assignment, the assigning or selling party shall provide written notice of same to the other party. Should no written notice be provided, the Notice information provided herein shall be sufficient for any notice required hereunder. For purposes of this Section 10.1, transfer does not include any sale of all or substantially all of the assets of Seller or Buyer or any merger of Seller or Buyer with another person, whether or not Seller or Buyer is the surviving entity from such merger, or any other change in control of Seller or Buyer, provided any such surviving entity assumes all obligations of Seller or Buyer, as appropriate, under this Agreement; provided however, with respect to Buyer, such surviving entity is acceptable to Lender in its sole discretion. ~~provided however, with respect to Buyer, such surviving entity is acceptable to Lender in its sole discretion.~~

10.2 Collateral Assignment; Financing Provisions:

(a) Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to a Lender. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender, Buyer agrees as follows:

(i) Consent to Collateral Assignment. Buyer hereby consents to both of the sale of the Facility to a Lender and the collateral assignment of the Seller's right, title and interest in and to this Agreement as security for financing associated with the Facility.

(ii) Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Lender, as owner of the Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility;

(B) Opportunity to Cure Default. The Lender shall have the right, but

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not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Seller under this Agreement or (unless the Lender has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Facility by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Buyer shall enter into a new agreement with Lender or its assignee having substantially the same terms and conditions as this Agreement.

(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

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- (b) Lender a Third-Party Beneficiary. Buyer agrees and acknowledges that Lender is a third-party beneficiary of the provisions of this Section 10.2.
- (c) Entry to Consent to Assignment. Buyer agrees to (i) execute any consents to assignment or acknowledgements and (ii) provide such opinions of counsel as may be reasonably requested by Seller and/or Lender in connection with such financing or sale of the Facility, so long as said documents do not alter the terms and conditions of this Original Agreement.

10.3 Obligation to Modify Agreement. If a Lender or the Seller requires this Agreement to be modified to finance, develop or operate the Facility, and the modification does not (i) materially restrict Seller's ability to deliver Credits to Buyer, (ii) materially restrict Buyer's ability to receive Credits, (iii) materially diminish the Credit value to Buyer, or (iv) disallow the Facility's qualification under either the Net Metering Program or the SMART Program, the Parties shall negotiate in good faith to amend this Agreement in a timely fashion. If the Parties, negotiating in good faith, cannot agree on the amendments, Seller may terminate this Agreement, or, if Seller determines in good faith that the Agreement cannot be amended to allow the Facility to be financed, developed or operated in a commercially reasonable manner, then Seller may terminate the Agreement; provided that any such termination occur within twelve (12) months of such failure to negotiate an amendment or determination that the Agreement cannot be amended. The terminating Party shall give the other Party thirty (30) days prior written notice and this Agreement shall terminate without further liability of the Parties to each other, provided that the Parties shall not be released from any obligation arising under this Agreement prior to such termination. In the event the Seller proposes that the Agreement be modified the Seller shall pay up to \$5,000 of the Buyer's reasonable and documented attorneys fees related to said negotiations and review.

ARTICLE XI DISPUTE RESOLUTION

- 11.1 Dispute Resolution. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.
- (a) Negotiation. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the chief executive of Seller, and the chief executive of Buyer, who shall use their respective best efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.
 - (b) Mediation. In the event that the Parties cannot resolve a dispute by informal

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negotiations, the Parties involved in the dispute agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator either Party may request the American Arbitration Association (the “AAA”) to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator’s fees shall be shared equally by all Parties involved in the dispute.

- (c) Judicial Review. In the event that negotiation or mediation are not successful following good faith efforts of both parties, pursuant to Sections 11.1(a) and (b), then either party may file in a court of competent jurisdiction in the Commonwealth of Massachusetts, Suffolk County.
- (d) Survival of Dispute Resolution Provisions. The provisions of this Section 11.1 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

**ARTICLE XII
MISCELLANEOUS**

12.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be deemed delivered upon receipt (except that notice provided by email shall be deemed delivered upon confirmation of receipt, of which auto-reply is insufficient), and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the following addresses:

If to Seller: [REDACTED], LLC
4 Liberty Square, Third Floor
Boston, MA 02109
Attn: [REDACTED]

If to Buyer: Town of Townsend
Board of Selectmen
272 Main Street
Townsend, MA 01469

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Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

12.2 Confidentiality. Except as provided in this Section 12.2, and to the extent allowed by law, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent.

- (a) Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, representatives, agents and employees who have a need to know related to this Agreement.
- (b) If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided however, to the extent permitted by law, such disclosing Party shall promptly notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

12.3 Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, the matter shall be resolved under Section 11 (regarding dispute resolution) and an arbitrator may reform the Agreement as the arbitrator deems just and equitable to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

12.4 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

12.5 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

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- 12.6 Press Releases. The Parties shall cooperate with each other when making public announcements of any kind or in any form related to the execution and existence of this Agreement, or the sale or purchase of Credits.
- 12.7 No Joint Venture. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.
- 12.8 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 12.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.
- 12.10 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other to effect or confirm transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.10.
- 12.11 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a reasonable manner.

No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement. This Section 12.12 shall not limit the right of a Lender pursuant to Section 10.2.

IN WITNESS WHEREOF, the Parties executed this Credit Purchase and Sale Agreement under seal as of the Effective Date.

BUYER

SELLER

Town of Townsend

LOCKE BROOK SOLAR, LLC

By: _____

By: _____

Name: _____

Name: _____

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Glossary of Terms

“***Affiliate***” means, as to any person or entity, any other person or entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person or entity. For purposes of this definition, “control” of a person or entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

“***Applicable Law***” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, constructing, operating, and owning the Facility, and selling and purchasing Credits.

“***Billing Period***” shall mean as defined in the applicable Tariff pursuant to which the Facility becomes qualified to receive Credits.

“***Business Day***” means a day on which Federal Reserve member banks in Boston, MA are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“***Commercial Operations***” shall occur for the Facility when (i) Seller has obtained all necessary licenses, permits and approvals under Applicable Law to install and operate the Facility, (ii) the Facility is able to generate and supply electricity to the Utility’s electricity distribution system, (iii) Seller has completed or obtained all Facility-related equipment and rights, if any, to allow regular Facility operation, and (iv) if applicable and to the extent required, the Utility has approved the Facility’s interconnection with the electricity distribution system to allow regular Facility operation.

“***Commercial Operations Date***” means the date on which the Facility achieves Commercial Operations and has obtained the final statement of qualification from the Massachusetts Department of Energy Resources (or equivalent).

“***Confidential Information***” means all oral and written information exchanged between the Parties which contains proprietary business or confidential information of a Party and is designated as “confidential” by such Party. If such disclosure is in tangible form, the materials shall be clearly marked “confidential” or words of similar import. If such disclosure is in any other manner, then the disclosing Party shall identify the disclosure as confidential at time of initial disclosure and deliver a written memorandum of such oral disclosure to the receiving Party within thirty (30) days of initial disclosure. The Parties agree that the provisions and specifics (but not the existence) of this Agreement constitute Confidential Information. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was

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already known by the receiving Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to such Party; (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations; (e) is disclosed by the disclosing Party to a third party without a duty of confidentiality; and (f) is disclosed by the receiving Party with the written permission of the disclosing Party's prior written approval.

“Construction Commencement Date” means the date of commencement of site preparation or construction activities on the property upon which the Facility is located.

“Credits”, if under the Net Metering Program, means the monetary value of the excess Energy generated by a net metering facility, stated as of the Effective Date under “Net Metering Credits” in the Tariff, and is calculated as of the Effective Date by the Utility according to 220 C.M.R. 18:04 and the Tariff §1.06; and if under the SMART Program, means the monetary value of the excess Energy generated by an Alternative On-Bill Credit Generation Unit, stated as of the Effective Date by the Utility according to 225 CMR 20.00, et seq. and the applicable Tariff; and each excluding, for the avoidance of doubt, any Tax Attributes or Environmental Attributes.

“Credit Value” shall be determined under either Net Metering Regulation 220 CMR §18:04(1), or under the SMART Program at 225 CMR 20.08(1)(a)(2) and the applicable Tariff, for the relevant Billing Period.

“Energy” means the amount of electricity the Facility generates over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

“Environmental Attribute” means GIS Certificates, Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, benefits, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Credits.

“Facility” means the solar (PV) power electrical generation facility identified on Exhibit B, attached hereto and incorporated herein, together with all appurtenant equipment required to interconnect the Facility to the Utility's electric distribution system.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; high winds, hurricanes or tornados; fires; epidemics; pandemic; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; state of

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emergency or public health emergency publicly declared by the Governor of the Commonwealth and/or the President of the United States, pandemic (as publicly declared by the United States Centers for Disease Control and/or the World Health Organization), government mandated quarantine or travel ban, war, acts of terrorism, and/or order of government or civil or military authorities; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

“Governmental Authority” means any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

“Governmental Charges” means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, Utility, or other similar entity, on or with respect to the Credits, but does not include charges imposed as what is known as of the Effective Date as a “monthly minimum reliability contribution” (“MMRC”), or any charge imposed in its place, regardless of how named or characterized.

“Interest Rate” means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate mutually acceptable to both the Seller and Buyer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days for which such interest is due.

“Lender” means the entity or person(s) (or any affiliate of any thereof) from time to time providing any financing or refinancing to the Seller or any affiliate thereof or otherwise for the construction of, expansion of, and/or operation and maintenance of, the Facility, and any successors, assigns, agents, or trustees thereof, including any lessor under a sale/leaseback financing structure.

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

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“**Meter**” means the meter furnished and installed by the Utility to measure the electricity delivered by the Utility to the Facility and delivered by the Facility to the Utility.

“**Net Metering Regulations or Program**” means the Applicable Law found as of the Effective Date at M.G.L. c. 164, §§138 – 143 and 220 C.M.R. §18.00, *et seq*, as they may be amended from time to time, and including all regulatory agency orders pertaining thereto.

“**Price**” is defined on Exhibit A.

“**Purchase Percentage**” is defined on Exhibit A.

“**Quantity**” means quantity of Credits purchased by Buyer, and equals the total Credits associated with the Energy generated by the Facility during the relevant Term or Billing Period (as determined pursuant to applicable law, regulation and Tariff), multiplied by the Purchase Percentage.

“**Renewable Energy Certificate**” or “**REC**” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, the Tax Attributes and the Credits.

“**SMART Program**” is the Applicable Law known as the “Solar Massachusetts Renewable Target” program. Specifically, that Applicable Law found as of the Effective Date at 225 C.M.R. §20.00, *et seq*, as it may be amended from time to time, and including all regulatory agency orders pertaining thereto.

“**Tariff**” means either the Utility tariff for interconnection for distributed generation and net metering services, or the Alternative On-bill Crediting mechanism tariff, as appropriate for the context, and each as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals thereto.

“**Tax Attributes**” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation), and excluding, for the avoidance of doubt, any Environmental Attributes and Credits.

“**Utility**” means the electric distribution company providing service to the Facility.

“**Utility Account(s)**” means the Utility accounts designated by Buyer and identified to the Utility by the Seller pursuant to applicable regulation under Net Metering Program or SMART Program.

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“Utility Statement(s)” means the statements from the Utility, which accompanies the Buyer’s Utility Account(s).

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EXHIBIT A

PRICE; and PURCHASE PERCENTAGE

“*Price*” equals the greater of

- (a) eighty-five percent (85%) of the Credit Value for that Billing Period,
- or
- (b) \$.08/kWh.

“*Purchase Percentage*” equals percent (%) of the Energy generated during the relevant Billing Period.

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EXHIBIT B

FACILITY

The Facility is the approximately [REDACTED] MW (AC) solar (PV) power electrical generation facility located at [REDACTED].

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