



FRANKLIN TOWN COUNCIL

March 6, 2013

7:00 PM

A. APPROVAL OF MINUTES - *February 6, 2013*

B. ANNOUNCEMENTS – *This meeting is being recorded by Franklin TV and shown on Comcast channel 11 and Verizon channel 29. This meeting may be recorded by Franklin Matters.*

C. PROCLAMATIONS/RECOGNITIONS

D. CITIZEN COMMENTS

E. APPOINTMENTS

F. HEARINGS

G. LICENSE TRANSACTIONS

H. PRESENTATIONS/DISCUSSIONS -
1. *Chief of Police, Stephan Semerjian*
2. *Financing the New High School*

I. SUBCOMMITTEE REPORTS

J. LEGISLATION FOR ACTION

1. *Resolution 13-08: Swahn Lane, A Private Way Acceptance of Covenant with Owner*
2. *Resolution 13-09: Transfer of Tax Title Possession Parcels to Different Municipal Purposes*
3. *Resolution 13-10: Town of Franklin Net Metering Power Purchase Agreement Authorization*
4. *Resolution 13-11: Authorization to Expend Funds in Excess of Available Appropriations*
5. *Bylaw Amendment 13-700: Amendment to Chapter 82, Appendix A, List of Service Fee Rates – 1st Reading*

K. TOWN ADMINISTRATOR'S REPORT

L. OLD BUSINESS

M. NEW BUSINESS

N. COUNCIL COMMENTS

O. EXECUTIVE SESSION – *Negotiations, Litigation, Real Property, as May Be Required*

P. ADJOURN

**FRANKLIN TOWN COUNCIL
MINUTES OF MEETING
February 6, 2013**

A meeting of the Town Council was held on Wednesday, February 6, 2013 at the Franklin Municipal Building, 355 East Central Street, Franklin, Massachusetts. Councilors present; Andrew Bissanti, Robert Dellorco, Glenn Jones, Matt Kelly, Thomas Mercer, Judith Pfeffer, Tina Powderly, Robert Vallee. Councilors Absent: Jeff Roy. Administrative personnel in attendance: Jeffrey Nutting; Town Administrator, Mark Cerel; Town Attorney and Maxine Kinhart; Assistant to the Town Administrator.

CALL TO ORDER: Chairman Vallee called the meeting to order at 7:00PM with a moment of silence and the Pledge of Allegiance.

APPROVAL OF MINUTES: *November 28, 2012 Regular Session, December 19, 2013 Executive Session* **MOTION** by Councilor Jones, Second by Councilor Mercer. **VOTE to Approve: Yes-8, No-0, Absent-1.**

ANNOUNCEMENTS: Chairman Vallee announced the meeting was recorded by Franklin TV and available for viewing on Comcast Channel 11 and Verizon Channel 29. The meeting was also recorded by Franklin Matters.

PROCLAMATIONS/RECOGNITIONS:

CITIZEN COMMENTS:

APPOINTMENTS:

HEARINGS:

LICENSE TRANSACTIONS:

PRESENTATIONS/DISCUSSIONS: **1. Jim Dacey; Treasurer-Collector**
2. Melanson Heath & Co., 2012 Audit:

Scott McIntire and Margaret Duprey from Melanson Heath & Company were present to review the June 30, 2012 audit and financial statements for the Town of Franklin. Mr. McIntire stated that the audit went very well, which was the main reason why the financial statements could be presented to the Town Council in early February. He also stated that the towns fund balance was in a good position and was slightly higher than last years. He briefly touched on the Towns OPEB obligation but noted that all towns in the Commonwealth were facing the same magnitude of OPEB obligations. He also reviewed the Management Letter with suggestions for improvements in developing a more formal Risk Assessment Process, formalize a Fund Balance Policy, and review internal controls in Ambulance billing and collection procedures.

SUBCOMMITTEE REPORTS:

Chairman Vallee called a two-minute recess at 8:05PM.

LEGISLATION FOR ACTION:

Resolution 13-05: Hoffmann Farms, A Private Definitive Subdivision Acceptance of Covenant with Owner: Councilor Pfeffer read the resolution to authorize the Town Administrator to execute the covenant on behalf of the Town of Franklin. **MOTION** by Councilor Powderly to move Resolution 13-05 **SECONDED** by Councilor Jones. **DISCUSSION:** Mr. Nutting stated this was a routine matter to keep the road private so it does not become a public way. **VOTE to Approve: Yes-8, No-0, Absent-1.**

Resolution 13-06: Town Clerk – Advertising - \$1,000: Councilor Pfeffer read the resolution to transfer

\$1,000 from Available Funds to the FY 2013 Town Clerk Expenses-Advertising. **MOTION** by Councilor Pfeffer to move Resolution 13-06 **SECONDED** by Councilor Kelly. **VOTE to Approve: Yes-8, No-0, Absent-1.**

Zoning Bylaw Amendment 12-695: Chapter 185, Section 31 Site Plan and Design Review – 2nd Reading: **MOTION** by Councilor Powderly to waive the reading **SECONDED** by Councilor Mercer. **VOTE to Approve: Yes-8, No-0, Absent-1.** **DISCUSSION:** Mr. Nutting stated this bylaw amendment and the following two bylaw amendments are in place to set standards and to streamline the Site Plan Bylaw for developers as well as for the Town. **MOTION** by Councilor Jones to move Zoning Bylaw Amendment 12-695 **SECONDED** by Councilor Powderly. **ROLL CALL: Bissanti-Yes, Dellorco-Yes, Jones-Yes, Kelly-Yes, Mercer-Yes, Pfeffer-Yes, Powderly-Yes, Vallee-Yes. VOTE to Approve: 8 – 0 – 1.**

Zoning Bylaw Amendment 12-696: Chapter 185, Section 20 Signs, Sign Approvals – 2nd Reading: **MOTION** by Councilor Powderly to waive the reading **SECONDED** by Councilor Mercer. **VOTE to Approve: Yes-8, No-0, Absent-1.** **MOTION** by Councilor Powderly to move Zoning Bylaw Amendment 12-696 **SECONDED** by Councilor Jones. **ROLL CALL: Bissanti-Yes, Dellorco-Yes, Jones-Yes, Kelly-Yes, Mercer-Yes, Pfeffer-No, Powderly-Yes, Vallee-No. VOTE to Approve: 6 – 2 – 1.**

Zoning Bylaw Amendment 12-697: Chapter 185, Section 45 Administration & Enforcement, Design Review Commission – 2nd Reading: **MOTION** by Councilor Powderly to waive the reading **SECONDED** by Councilor Mercer. **VOTE to Approve: Yes-8, No-0, Absent-1.** **MOTION** by Councilor Jones to move Zoning Bylaw Amendment 12-697 **SECONDED** by Councilor Kelly. **DISCUSSION:** Mr. Nutting explained this amendment reorganizes the Design Review Commission. **ROLL CALL: Bissanti-Yes, Dellorco-Yes, Jones-Yes, Kelly-Yes, Mercer-Yes, Pfeffer-No, Powderly-Yes, Vallee-Yes. VOTE to Approve: 7 – 1 – 1.**

TOWN ADMINISTRATOR’S REPORT: ► Mr. Nutting gave a brief update on the budget process. Mr. Nutting said he will have an update on revenue amounts by April and he will have health insurance information within the next 30 days. Mr. Nutting said the Town still does not have a Collective Bargaining Agreement with the firefighters, so funds related to any agreement are not included in the budget. Mr. Nutting said he does not anticipate any reduction in staffing levels, but does anticipate resources being stretched in FY 15.

OLD BUSINESS: NONE.

NEW BUSINESS: ► Councilor Pfeffer inquired about a water leak at the Senior Center. Councilor Mercer relayed a conversation he had with the Facilities Director regarding the water leak, which stemmed from a frozen pipe - stating there was a design flaw and the Facilities Director is correcting the situation. ► Chairman Vallee asked Mr. Nutting about fees the Town pays to Norfolk County. Mr. Nutting said he does not know the exact amount, but believes the Town pays Norfolk County between \$200,000 - \$300,000 per year.

COUNCILOR COMMENTS: ► Councilor Pfeffer said the Council cannot look into issues raised in anonymous letters, and requested folks to please include their name and phone number in letters. ► Councilor Mercer provided an update on the High School Project. The first pieces of steel were erected on February 2, 2013, and the project is exactly on schedule. ► Councilor Kelly also spoke on the anonymous letters he had received. Councilor Kelly invited folks to attend the Council Meetings and speak. ► Chairman Vallee asked Mr. Nutting to look into when the parking meter officer writes parking tickets. Chairman Vallee said he had received several complaints regarding people receiving parking tickets early in

the morning.

ADJOURN: MOTION by Councilor Mercer to adjourn **SECONDED** by Councilor Kelly. **VOTE to Approve: Yes-8, No-0, Absent-1.** Meeting adjourned at 8:29PM.

Respectfully Submitted,

Jan Brecht, Recording Secretary

PRESENTATIONS
AND
DISCUSSIONS

1. CHIEF OF POLICE, STEPHAN
SEMERJIAN
2. FINANCING THE NEW HIGH
SCHOOL



MEMORANDUM

DATE: March 1, 2013
TO: Town Council
FROM: Jeffrey D. Nutting, Town Administrator
RE: Financing the New High School

As you will recall, when we were explaining the cost to the voters prior to the vote last March, we showed a payment schedule based on borrowing \$47 million at 4.25 % for 25 years.

For the average single-family home assessed in 2012 for \$353,000, the payment schedule was estimated as follows:

Year

2013 \$ 1
2014 \$ 45
2015 \$ 85
2016 \$216
2017 \$260 and continuing until paid

The project came in under budget, and at this point, I estimate the cost to the Town of \$44-\$45 million. In the current interest environment, I would like the Town Council's input of changing the payment plan to save each homeowner over \$1,100 over the life of the project. (See attached)

If we borrow \$44 million in August, we anticipate the following payment schedule:

Year

2013 \$ 1
2014 \$ 71
2015 \$212
2016 \$212 and continuing until paid

While in the early years taxpayers pay a little more, by 2016 they pay less for the remaining life of the bond. We currently project the savings at \$1,172, but the final number will be based on the actual interest rate. I will make a short presentation at the next meeting and ask for your guidance. Please call with questions.

Town of Franklin
FHS Project
Average House Value: 353,000

Original Plan:	Total Cost											
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2040		
\$47 Million 4.25%	\$ 1	\$ 45	\$ 85	\$ 216	\$ 262	\$ 263	\$ 262	\$ 262	\$ 262	\$ 259	\$6,612	\$6,612

New Plan:												
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2040		
\$44 Million 3.65%	\$ 1	\$ 71	\$ 212	\$ 211	\$ 210	\$ 209	\$ 209	\$ 210	\$ 211	\$ -	\$5,440	\$5,440
Difference	\$ (0)	\$ 25	\$ 127	\$ (5)	\$ (52)	\$ (54)	\$ (53)	\$ (52)	\$ (51)	\$ (259)		

LEGISLATION

FOR

ACTION

ï»¿

From: Mark Cerel Friday, March 01, 2013 10:30:08 AM
Subject: Fwd: Resolution 13-08 Acceptance of Swahn Lane Covenant
To: Maxine Kinhart

----- Original Message -----

This resolution represents another case where the planning board has conditioned its approval of a small (three lot) subdivision on the road, drainage and other infrastructure remaining private, with the result that the town will have no responsibility for road maintenance and repair which will solely be the responsibility of the developer and the homeowners. This is legally effectuated by the current property owners' execution of a covenant with the Town which they have done; a copy is attached to the resolution. By passing the resolution, the Town Council is accepting the terms of the covenant on behalf of the town and authorizing the Town Administrator to sign the acceptance so that the fully executed document can be recorded at Norfolk County Registry of Deeds.



Sponsor: Administration

TOWN OF FRANKLIN

**RESOLUTION 13-08
SWAHN LANE, A PRIVATE WAY
ACCEPTANCE OF COVENANT WITH OWNER**

WHEREAS, the Franklin Planning Board on August 13, 2012 voted to approve with conditions a definitive plan for a three-lot residential subdivision known as Swahn Estates, which vote was filed with the Town Clerk on August 24, 2012; and

WHEREAS, said vote included conditions that the roadway and related drainage be and remain private and that the private property owner(s) have the exclusive obligation to maintain and repair the same, as well as to remove snow therefrom; and

WHEREAS, John M. Carlucci and Heather M. Carlucci with a residence at 9 Sheila Lane in Franklin, MA are the owners of the subject property and have executed a covenant, incorporating the foregoing conditions, a true copy being attached hereto as Exhibit 1;

NOW, THEREFORE, BE IT ORDERED that the Town of Franklin, acting by and through its Town Council, hereby authorizes the Town Administrator to execute the covenant, a copy of which is attached hereto as Exhibit 1, on behalf of the Town of Franklin.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

DATED: March _____, 2013

VOTED:

UNANIMOUS _____

A True Record Attest:

YES _____ NO _____

ABSTAIN _____

**Deborah L. Pellegrini
Town Clerk**

ABSENT _____

**Judith Pond Pfeffer, Clerk
Franklin Town Council**

EXHIBIT 1

COVENANT WITH THE TOWN OF FRANKLIN
(SWAHN LANE, A PRIVATE WAY)

We, John M. Carlucci and Heather M. Carlucci, having a usual place of residence at 9 Sheila Lane, Franklin, Norfolk County, Massachusetts, and being the owner of the land shown as Lots 2-1, 2-2, and 2-3 situated on the westerly side of Sheila Lane in said Franklin, Norfolk County, Massachusetts, shown on a plan entitled "Swahn Estates, Private Definitive Subdivision Plan of Land in Franklin, Massachusetts", herein the "Plan" dated , revised , prepared by Guerriere & Halnon, Inc., 38 Pond Street, Suite 206, Franklin, MA 02038, recorded at the Norfolk County Registry of Deeds as Plan No. , Plan Book .

Swahn Lane is shown on said plan as a private way and is the sight of the private way as shown on said plan. The plan was approved with conditions by the Planning Board of the Town of Franklin by Certificate of Vote dated , filed with the Town Clerk of the Town of Franklin on , a certified copy of which is recorded herewith.

In accordance with said Plan and Certificate of Vote, we, for valuable consideration paid, the receipt of which is hereby acknowledged, do for ourselves and our heirs, successors, transferees and assigns, covenant and agree with the Town of Franklin, by and through its Town Administrator, whose signature is affixed hereto, together with a resolution of the Town Counsel of said Town of Franklin, as follows:

1. Swahn Lane shall be constructed as a private way in accordance with the above described Plan and any and all waivers granted by the Franklin Planning Board, together with the Drainage Easement shown on said Plan, which shall be constructed as a private drainage system in the Town of Franklin;
2. The property owners served by said Swahn Lane shall have the exclusive and continual obligation for maintenance, repair and snow removal of said way and the maintenance and repair of the drainage structures with said way and drainage easement;
3. Swahn Lane shall remain a private road and is not intended to be now or at any time in the future a public way and the drainage system shall remain a private structure for the benefit of Lots 2-1, 2-2, and 2-3.
4. No petition shall ever be made to the Town of Franklin seeking to change the status of Swahn Lane and/or the Drainage system from that of a private way/private drainage structure or to transfer the obligation for maintenance,

repair and/or snow removal from the private property owners to the Town of Franklin;

5. Swahn Lane and the Drainage Structure shall be constructed in accordance with the standards set forth in Section 300, Subdivision of Land Rules and Regulations of the town of Franklin, except those waived by the Planning Board. Maintenance and repair of the access drive, water supply systems, sewer pipes, electric distribution system and storm water system shall be the responsibility of the owners and shall never be the responsibility of the Town and the Town shall never be required to perform any service, repair or maintenance with respect to said ways, areas or any of the aforementioned systems within the subject property. The Town will never be required to provide snow plowing with respect to the subject property;
6. The Town of Franklin, its agents and servants shall have the right but not the obligation at all times to enter Swahn Lane and the Drainage Easement for the purposes of inspecting, maintaining, and/or making emergency repairs including, but not limited to, drainage. In such event, the private property owner shall be liable, jointly and severally, for the payment of all expenses incurred by the Town in connection therewith, and unpaid expenses shall constitute a lien on their property.

This Covenant shall be binding upon the Record owners of Lots 2-1, 2-2, and 2-3 and their heirs, successors, transferees and assigns and shall run with the land.

Executed as a sealed instrument this ^{14th} 8 day of August, ^{2013.} 2012.


John M. Carlucci


Heather M. Carlucci

COMMONWEALTH OF MASSACHUSETTS

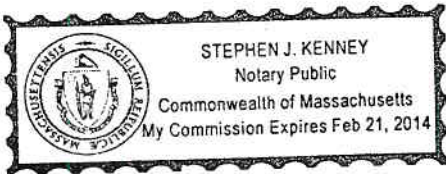
Norfolk, SS.

~~JANUARY~~
August 14, 2012-2013

On this ~~14~~ day of ~~August~~, ~~2012~~, before me, the undersigned notary public, personally appeared John M. Carlucci and Heather M. Carlucci, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.


Notary Public

My commission expires:



TOWN OF FRANKLIN

By:

Jeffrey D. Nutting
Town Administrator
Hereunto duly authorized

COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS.

, 2012-2013

On this day of , ~~2012~~²⁰¹³, before me, the undersigned notary public, personally appeared Jeffrey D. Nutting, Town Administrator as aforesaid, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that signed it voluntarily for its stated purpose.

MORTGAGEE'S ASSENT
Mortgage Electronic Registration Systems, Inc. ("MERS")

, a duly organized banking corporation with a principal place of business at P.O. Box 780 Waterloo, IA 50704, holder of a mortgage from John M. Carlucci and Heather M. Carlucci to _____ on the property situated on the westerly side of Sheila Lane, Franklin, Norfolk County, Massachusetts, being shown as Lots 2-1, 2-2, and 2-3 on Plan entitled _____

recorded with Norfolk County Registry of Deeds at Plan No. _____ Plan Book _____ as described in the foregoing Covenant with the Town of Franklin, said mortgage recorded at Norfolk County Registry of Deeds, Book _____, Page _____, hereby assents to and joins in the foregoing Covenant.

In Witness Whereof, MERS has caused this instrument to be executed on its behalf by its duly authorized officer this 15 day of November Mortgage Electronic Registration Systems, Inc. ("MERS")



By:

Rachel Ragsdale
Rachel Ragsdale
ASSISTANT SECRETARY
S

, 2012

On this 15 day of November 2012 before me, the undersigned notary public, personally appeared Rachel Ragsdale, personally known, ~~proved to me through satisfactory evidence of identification,~~ which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that Rachel Ragsdale signed it voluntarily for its stated purpose.



My commission expires:
7-11-2015

G. Hintz
Notary Public
G. Hintz

MORTGAGEE'S ASSENT

ROCKLAND TRUST CO., a duly organized banking corporation with a principal place of business at P.O. BOX 1418, Middlebury, MA 02346, holder of a mortgage from John M. Carlucci and Heather M. Carlucci to _____ on the property situated on the westerly side of Sheila Lane, Franklin, Norfolk County, Massachusetts, being shown as Lots 2-1, 2-2, and 2-3 on Plan entitled _____

_____ recorded with Norfolk County Registry of Deeds at Plan No. _____ Plan Book _____ as described in the foregoing Covenant with the Town of Franklin, said mortgage recorded at Norfolk County Registry of Deeds, Book _____, Page _____, hereby assents to and joins in the foregoing Covenant.

In Witness Whereof, _____ has caused this instrument to be executed on its behalf by its duly authorized officer this 4TH day of ~~August~~, 2012.
JANUARY, 2013

By:

Linda R. LaGarde
Linda R. LaGarde
FIRST VICE-PRESIDENT

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH
Norfolk, SS.

2013
, 2012

On this 4TH day of ~~August~~, 2012, before me, the undersigned notary public, personally appeared Linda R. LaGarde, proved to me through satisfactory evidence of identification, which was personally known, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that Linda LaGarde signed it voluntarily for its stated purpose.

Thomas J. McKenna
Notary Public

My commission expires: 3/16/18



Thomas J. McKenna
Notary Public
Commonwealth of Massachusetts
My Commission Expires
March 16, 2018

TOWN OF FRANKLIN
RESOLUTION 13-09
TRANSFER OF TAX TITLE POSSESSION PARCELS
TO DIFFERENT MUNICIPAL PURPOSES

WHEREAS, G.L. Chapter 40, §15A provides a procedure to transfer the care, custody, management and control of municipal land from one municipal purpose to another specific municipal purpose when the board or officer having charge of said land determines that it is no longer needed for the purpose for which he is holding it and gives notice of said fact, and

WHEREAS, the Town Administrator has been appointed custodian pursuant to G.L. Chapter 60, Section 77B of municipal land acquired by tax title and, as such, has care, custody, management and control of said land for the purpose of said statute, and

WHEREAS, the Town Administrator, acting as custodian, has determined that various parcels which comprise said land are no longer needed for said purpose and has given written notice of said fact,

NOW, THEREFORE, BE IT RESOLVED BY the Franklin Town Council that the care, custody, management and control of Town's tax title possession parcels be transferred from the Town Administrator, as custodian, to another Town Board, Commission or Department for another specific municipal purpose pursuant to G.L. Chapter 40, Section 15A as follows:

The following parcel would best serve the needs of the Town if transferred to Municipal property to be used for General Government:

MAP LOCATION #	PARCEL ID	STREET	ACRES	TITLE REFERENCE Book, Page
1	236-088-000	Parliament Drive	2.00	Bk. 25854 Pg. 312

The following parcels would best serve the needs of the Town if transferred to the Conservation Commission:

MAP LOCATION #	PARCEL ID	STREET	ACRES	TITLE REFERENCE Book, Page
2	265-016-000	Wampanoag Dr.	2.34	Bk. 23572 Pg. 381
3	297-069-000	Located off Wachusett St. on Roosevelt Ave. a paper street.	9,017 sf	Bk. 14780 Pg. 153
4	265-056-000	Concetta Way	2.52	Bk. 10969 Pg. 640
5	212-011-000	Pond Street	2.60	Bk. 9960 Pg. 71
6	212-012-000	Pond Street	1.99	Bk. 27562 Pg. 314

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

DATED: _____, 2013

VOTED:

UNANIMOUS _____

A True Record Attest:

YES _____ NO _____

Deborah L. Pellegri
Town Clerk

ABSTAIN _____

ABSENT _____

Judith Pond Pfeffer, Clerk
Franklin Town Council

FRANKLIN PLANNING & COMMUNITY DEVELOPMENT

355 EAST CENTRAL STREET, ROOM 120
FRANKLIN, MA 02038-1352
TELEPHONE: 508-520-4907
FAX: 508-520-4906

MEMORANDUM

TO: JEFFREY NUTTING, TOWN ADMINISTRATOR
FROM: BRYAN W. TABERNER, AICP, DIRECTOR
RE: TOWN OWNED LAND TRANSFER RECOMMENDATIONS
CC: TOWN COUNCIL JAMES DACEY, TOWN TREASURER; KEVIN DOYLE, DIRECTOR OF ASSESSING; MARK CEREL, TOWN ATTORNEY; BETH A. DAHLSTROM, TOWN PLANNER; MICHELE GRENIER, CONSERVATION AGENT; CONSERVATION COMMISSION; PUBLIC LAND USE
DATE: FEBRUARY 25, 2013

As you are aware, the Department of Planning and Community Development has been working with the Assessor's Office, Town Treasurer and other Town staff to develop a list of tax possession properties for disposition; the list includes 6 parcels. Over the course of the past year, the Assessor's Office worked to assign deeds to the tax possession parcels, showing that these parcels are indeed property held by the Town of Franklin. The following is the list of properties that was assembled by the Assessor's Office and Treasurer's Office for review:

PARCEL ID	STREET
236-088-000	Parliament Dr.
265-016-000	Wampanoag Dr.
297-069-000	Roosevelt Ave./ Wachusett St.
265-056-000	Concetta Way
212-011-000	Pond St.
212-012-000	Pond Street

After the Assessor's Office assigned deeds to show Town ownership, each parcel was then evaluated by various Town Departments to make a determination as to the best use for each parcel. The parcels were evaluated based on various factors, including: revenue that would be produced if the property were auctioned by the Town; should the property be kept for conservation purposes; would it serve a greater purpose if transferred to a specific Town Department such as the Department of Public Works or Conservation Commission; and should it remain in control by the Town for future development purposes (i.e., site for affordable housing or construction of a new municipal facility; sell and redevelop through an RFP process).

As the Tax Title Custodian, DPCD is asking you to consider the following recommendations for disposition of the above referenced properties:

The following parcel would best serve the needs of the Town if transferred to Municipal property to be used for General Government:

MAP LOCATION #	PARCEL ID	STREET	ACRES	COMMENT	TITLE REFERENCE Book, Page
1	236-088-000	Parliament Drive	2.00	Used as a Playground – Harborwood Association	Bk. 25854 Pg. 312

The following parcels would best serve the needs of the Town if transferred to the Conservation Commission:

MAP LOCATION #	PARCEL ID	STREET	ACRES	COMMENT	TITLE REFERENCE Book, Page
2	265-016-000	Wampanoag Dr.	2.34	Mostly wet.	Bk. 23572 Pg. 381
3	297-069-000	Located off Wachusett St on Roosevelt Ave. a paper street.	9,017 sf	Wet	Bk. 14780 Pg. 153
4	265-056-000	Concetta Way	2.52	Abuts Town Open Space	Bk. 10969 Pg. 640
5	212-011-000	Pond Street	2.60	Wet	Bk. 9960 Pg. 71
6	212-012-000	Pond Street	1.99	Wet	Bk. 27562 Pg. 314

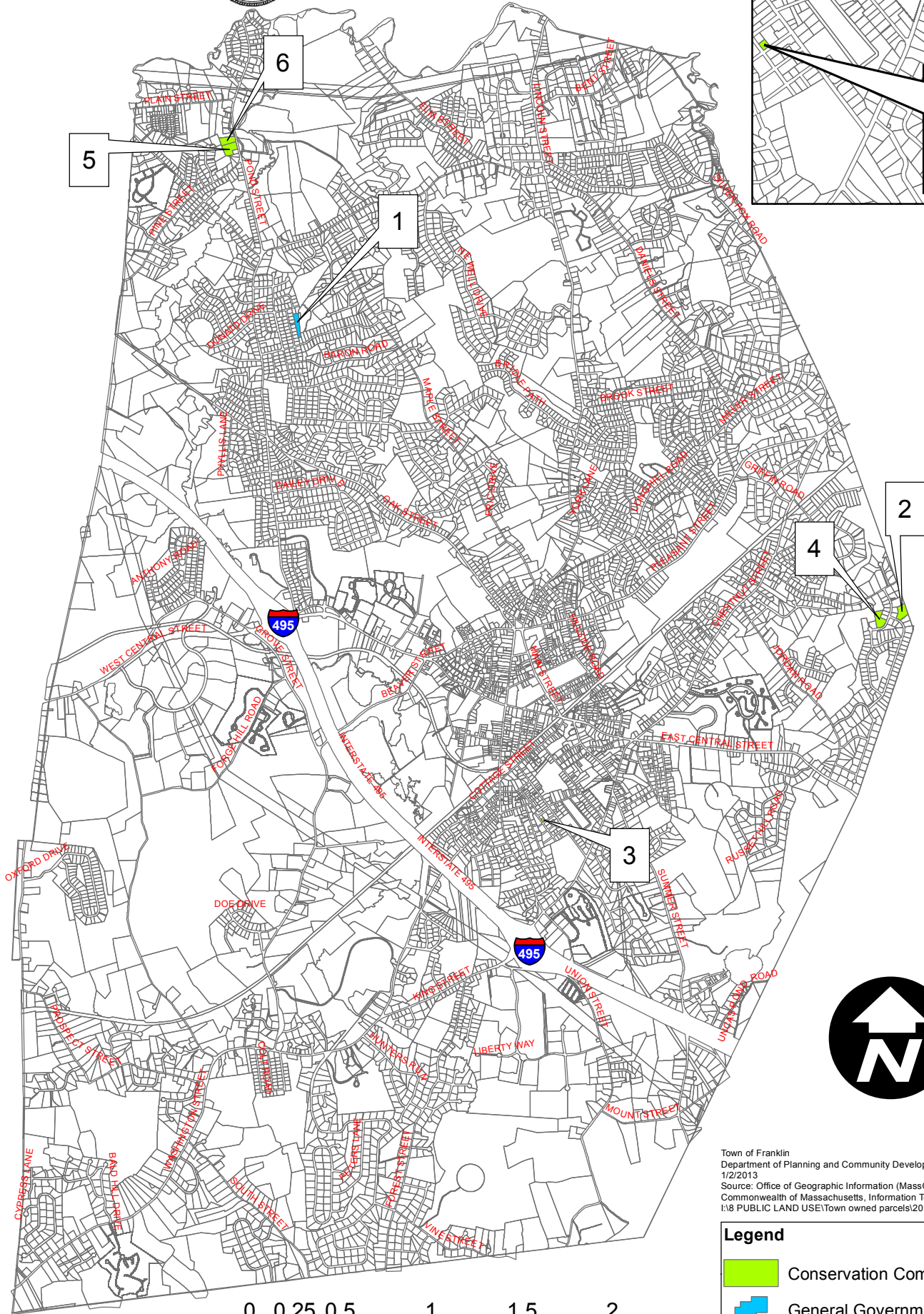
Attached to this memo is a map that corresponds to the map location number listed with each parcel for easy identification. DPCD has prepared the required Town Council Resolutions authorizing transfer of the Tax Title Possessions for specific municipal purposes.

Please let me know how you would like to proceed with the disposition of these parcels or if you have any questions or concerns.





Town of Franklin

Town Lands



Town of Franklin
Department of Planning and Community Development
1/2/2013
Source: Office of Geographic Information (MassGIS)
Commonwealth of Massachusetts, Information Technology Division
1:18 PUBLIC LAND USE/Town owned parcels/2012TownParcels.pdf

Legend

-  Conservation Commission
-  General Government

OFFICE OF THE TOWN ADMINISTRATOR



MEMORANDUM

DATE: March 1, 2013
TO: Town Council
FROM: Jeffrey D. Nutting, Town Administrator
RE: Net Metering Agreement

Please find attached the net metering and power purchase agreement for “phase two” of the solar installation on Upper Union Street. This phase will add an additional \$145,000 to the tax rolls and when complete with the other phase, save over \$50,000 per year in electric cost to the Town.

Please call with questions.

TOWN OF FRANKLIN

RESOLUTION 13-10

**TOWN OF FRANKLIN NET METERING POWER PURCHASE AGREEMENT
AUTHORIZATION**

WHEREAS, KS Solar Five, LLC is developing a four (4) Mgw ground mounted solar facility which is estimated to produce just over 4.8 million kWh of electricity annually and which is located at Upper Union Street, Franklin, MAP 333 LOT 002 AND MAP 343 LOT 003 and which is located in the Rural Residential I zoning district (the “Facility”) ; and

WHEREAS, the Town of Franklin uses over 12 million kWh of electricity per year; and

WHEREAS, the KS Solar Five, LLC have negotiated a twenty (20) year Net Metering Power Purchase Agreement under the provision of G.L. c. 25A which will secure an average price of ten (10%) percent below the rate the Town currently pays over the twenty year period; and

WHEREAS, the real estate upon which the Facility is located is currently exempt from taxation but once the Facility is constructed, the real property and personal property will be subject to taxation in accordance with a Taxes Agreement as approved by the Board of Assessors;

WHEREAS, the Town Council, supports efforts to encourage the use of renewable energy, capitalize on the provisions of G.L. c. 25A, which are beneficial to the Town of Franklin and to be ever conscious of long term efforts to save money and provide for stability in budgeting and long term planning.

NOW THEREFORE BE IT RESOLVED by the Town Council of the Town of Franklin, that the Town Administrator shall be authorized to complete negotiations and enter into a Net Metering Power Purchase Agreement and a Taxes Agreement as provided in M.G.L. C. 59 §38H (b) both for a term not to exceed twenty (20) years, by and between the Town of Franklin and KS Solar Five, LLC in relation to a four (4) Mgw ground mounted solar energy system to be located at the property of the Cistercian Nuns of Strict Observance on Upper Union Street, Franklin.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

DATE: _____

VOTED: **Unanimous** _____

True Attest Record

Yes: _____ **No:** _____

Town Clerk

Abstain _____

Absent _____

Judith Pond Pfeffer, Clerk
Franklin Town Council

NET METERED POWER PURCHASE AGREEMENT

This Net Metered Power Purchase Agreement (“**Agreement**”) is entered into as of _____ (the “**Effective Date**”) and is by and between KS Solar Five LLC, with offices at 480 Pleasant Street, Suite B110, Watertown, MA 02472 as seller (“**Seller**”), and the Town of Franklin, by and through its Town Administrator, with offices at 355 East Central Street, Franklin MA, 02038, as buyer (“**Buyer**”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, Seller is in the business of financing, developing, owning, operating and maintaining a four (4) MW (AC) solar photovoltaic (“**PV**”) electric generation facilities;

WHEREAS, Seller proposes to finance, install, own, operate and maintain the Solar Energy Facility to be located on a site located in Franklin, Massachusetts;

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, one hundred percent (100%) of the Net Metering Credits generated by the Solar Energy Facility during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement.

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

ARTICLE I DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given below. Words defined in this Article 1 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.

“**Accounts**” means Buyer’s accounts with the Local Distribution Company.

“**Actual System Output**” has the meaning set forth in Section 4.6(c).

“**Affiliate**” means with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

“**Agreement**” has the meaning set forth in the preamble of this Agreement (above).

“Applicable Legal Requirements” means any law, act, rule, regulation, requirement, standard, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, and other governmental consents, which are applicable to a Party’s rights and obligations hereunder, including, without limitation, the construction, operation, maintenance and ownership of the Solar Energy Facility, as well as the selling and purchasing of Net Metering Credits therefrom.

“Billing Cycle” has the meaning set forth in Section 4.1.

“Business Day” means a day on which Federal Reserve member banks in Boston 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.

“Buyer” has the meaning set forth in the preamble of this Agreement (above).

“Buyer’s Percentage” has the meaning set forth in Section 4.1.

“Change in Applicable Legal Requirements” means, after the Effective Date, any passage, enactment, modification, revision, repeal, addendum, interpretation or other change in any Applicable Legal Requirement affecting the rights or obligations of Buyer or Seller under this Agreement, including without limitation, implementation by the Massachusetts Department of Public Utilities, Massachusetts Department of Energy Resources or other Governmental Authority of any Applicable Legal Requirement relating to the Solar Energy Facility, the Tariff, the Net Metering Credits, Net Metering or otherwise affecting this Agreement.

“Commercial Operation” means the date on which the Solar Energy Facility is capable of generating electrical energy on a commercial basis, and the interconnection to the Local Distribution Company has been authorized by the Local Distribution Company.

“Commercial Operation Date” means the date on which Commercial Operation is achieved.

“Confidential Information” means all oral and written information disclosed by a Party to the other Party which contains proprietary business or confidential information of the disclosing Party. If such disclosure is oral, then the disclosing Party shall deliver a written memorandum of such oral disclosure to the receiving Party within thirty (30) days. 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 already known by either Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to either Party on a non-confidential basis from a source other than the other 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 Applicable Legal Requirements; and (e) information for which disclosure is required

under the Massachusetts Public Records Act, including, without limitation, G. L. c. 4, §7, cl. 26 and G. L. c. 66, §10.

“Contract Year” means the consecutive 12-month period commencing on the Commercial Operation Date, and each consecutive 12 month period during the Term, commencing each year on the anniversary of the Commercial Operation Date.

“Credit Start Date” means the first date on which the Solar Energy Facility generates Net Metering Credits.

“Effective Date” has the meaning set forth in the preamble of this Agreement (above).

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

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to an electric generating facility or the electric energy, capacity or other generator-based products produced therefrom, including (a) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto, (b) any avoided emissions of methane, carbon dioxide and other “greenhouse gases” that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasi-governmental or non-governmental agency or body to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, and any rights related thereto, (c) any reporting rights relating to the reduction of “greenhouse gases” under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates,” and (d) any credits, certificates or similar instruments issued pursuant to a federal or state renewable portfolio standard or analogous program. Environmental Attributes shall not include the Net Metering Credits to be allocated to Buyer under this Agreement.

“Event of Default” has the meaning set forth in Section 8.1.

“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; winds; hurricanes; tornadoes; fires; epidemics; 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; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Force Majeure shall not mean: (i) economic hardship (including inability to meet payment obligations) of either Party; or (ii) any nonpayment under this Agreement or any third party agreement.

“Governmental Authority” means (i) any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, and (ii) any transmission or distribution entity providing net metering, distribution or transmission services to the Solar Energy Facility, including the Local Distribution Company.

“Governmental Charges” means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, real property, personal property, 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).

“Host Customer” has the meaning set forth in 220 C.M.R. § 18.02 and the Tariff.

“Interconnection Agreement” means the Interconnection Service Agreements required for interconnection of the Solar Energy Facility, between Seller and the Local Distribution Company.

“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; provided that 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 reasonably acceptable to 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. Notwithstanding the foregoing, the Interest Rate shall never exceed 10%.

“LDC Retail Rate” means the average applicable all-inclusive rate (expressed on a \$/kWh basis) charged by the Local Distribution Company in any Contract Year for electricity that is delivered in the municipality in which Buyer is located, and shall include, without limitation, all electric commodity charges, transmission, distribution or other delivery charges, ancillary service charges, transition, renewable energy, efficiency, or competitive service charges, taxes, and other fees and charges in place.

“Lender” means any Person (a) providing direct or indirect senior or subordinated construction, interim or long-term debt or equity financing or refinancing to Seller (or to any permitted assignee of all or any portion of this Agreement, or to any Affiliates of Seller) for or in connection with the development, construction, purchase, installation or operation of the Solar Energy Facility, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing), including any equity and tax investor directly or indirectly providing financing or refinancing for the Solar Energy Facility or purchasing equity ownership interests of Seller (or of any permitted assignee of all or any portion of this Agreement, or to any Affiliates of Seller), and any trustee or agent acting on their behalf,

(b) providing direct or indirect interest rate protection agreements to hedge any of the foregoing obligations and/or (c) participating directly or indirectly in a lease financing, including any sale leaseback or leveraged leasing structure, with respect to the Solar Energy Facility.

“Local Distribution Company” means National Grid, or any Person that is a successor local electric distribution company that allocates Net Metering Credits generated by the Solar Energy Facility.

“Minimum Output Requirement” has the meaning set forth in Section 4.6(b).

“Net Metering” means the process of measuring the difference between electricity delivered by the Local Distribution Company to a net metering facility and electricity generated by the same net metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00, as may be amended from time to time by a Governmental Authority.

“Net Metering Credits” means the monetary value of the excess electricity generated by a Solar Net Metering Facility, as defined in accordance with 220 CMR 18.02, and calculated in accordance with 220 CMR 18.04 and Section 1.06 of the Tariff.

“Net Metering Program Cancellation” means a Change in Applicable Legal Requirements that results in (a) the inability of the Solar Energy Facility to generate Net Metering Credits that can be allocated to Buyer, or (b) the ineligibility of Buyer to receive, use or have allocated to its Accounts, Net Metering Credits.

“Party” or ***“Parties”*** has the meaning set forth in the preamble of this Agreement (above).

“Percentage Discount” has the meaning set forth in Section 4.2.

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

“Tax Agreement” means the Property Tax Agreement by and among Buyer and Seller attached hereto as Exhibit D.

“Premises” means the area leased by Seller pursuant to that certain Lease Agreement by and between Seller and Cistercians of Strict Observance, Inc. dated as of [REDACTED], as set forth in Exhibit E.

“Price” has the meaning set forth in Section 4.2.

“Renewable Energy Incentives” means: (a) federal, state, or local tax credits associated with the construction, ownership, or production of electricity from the Solar Energy Facility (including credits under Sections 45 and 48 of the Internal Revenue Code of 1986, as amended), or any governmental payments made in lieu of such tax credits

(such as those described in Section 1603 of division B of the American Recovery and Reinvestment Act of 2009); (b) any federal, state or local grants, rebates, feed-in tariffs, subsidized financing or any other subsidy relating to the Solar Energy Facility or the output thereof; and (c) any other form of incentive that is not an Environmental Attribute that is available with respect to the Solar Energy Facility.

“Seller” has the meaning set forth in the preamble of this Agreement (above).

“Shortfall” shall have the meaning set forth in Section 4.6(c).

“Shortfall Payment” shall have the meaning set forth in Section 4.6(c).

“Solar Energy Facility” means the solar (PV) power electrical generation facility planned to be constructed, owned, operated and maintained by Seller, with specifications for an estimated aggregate nameplate capacity of approximately [4 MW (AC)], together with all appurtenant facilities required to interconnect the Solar Energy Facility to the local electric distribution system, all to be located in Franklin, Massachusetts.

“Solar Net Metering Facility” has the meaning set forth in 220 C.M.R. § 18.02 and Section 1.01 of the Tariff.

“Standard Insolation Conditions” means insolation conditions at the Premises between 4.0 and 4.5 kWh per m² per day.

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

“Tariff” means the applicable tariffs of the Local Distribution Company for interconnection for distributed generation and net metering services, as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals thereto.

ARTICLE II

TERM

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

a. Extension of Term. Subject to the approval of the Town of Franklin’s Town Council, which approval may be granted or withheld in Buyer’s sole discretion, and provided that this Agreement has not been earlier terminated pursuant to the provisions herein, either Party may request to extend the Term of this Agreement for up to two additional consecutive terms of five (5) years upon the expiration of the then Term by giving the other Party at least two hundred seventy (270) days prior written notice of its desire to extend the Term along with the proposed pricing terms during such 5-year extension. The Parties will negotiate in good faith the pricing terms for any

such extension. Any extension of the Term of this Agreement shall occur only pursuant to a mutual written agreement and approval of the Parties.

b. Early Termination.

i. Either Party may terminate this Agreement in the event that the Credit Start Date has not occurred by the last day of the twelfth (12th) month after the Effective Date (the first month of such 12-month period shall be the month of the Effective Date). In the case of termination pursuant to this subsection, the terminating Party shall give the other Party seven (7) days prior written notice of its intent to terminate. The terminating Party may so terminate this Agreement within sixty (60) days after the expiration of such 12-month period whether or not the Credit Start Date occurs within such 60-day period, and the non-terminating Party shall have no “right to cure” during the seven-day notice period. In the event that a Party fails to provide such notice within such 60-day period, if the Credit Start Date has still not occurred after expiration of such 60-day period, either Party may terminate this Agreement after such 60-day period provided its notice of termination is received by the non-terminating party before the Credit Start Date occurs; otherwise, the Party shall be deemed to have waived its right to terminate under the applicable subsection in question. Upon termination of this Agreement by either Party pursuant to this Section 2.1(b)(i), (i) neither Party shall have any obligation or financial liability to the other Party as a result of such termination, and (ii) in the event the termination is due to the Seller’s inability to achieve Commercial Operation, Seller shall be permitted to sell, free and clear of any claim by Buyer, any Net Metering Credits contemplated under this Agreement to any third party after offering to Buyer the right to re-enter this Agreement on the same terms and conditions for a period of thirty (30) days by providing written notice by Seller that it is able to attain Commercial Operation; and (iii) in the event the termination is due to the Buyer’s actions or inactions, Seller shall be permitted to sell, free and clear of any claim by Buyer, any Net Metering Credits contemplated under this Agreement.

ii. Buyer may terminate this Agreement within thirty (30) days after receipt of the Notice of Commercial Operations Date from Seller pursuant to Section 3.2 herein, in the event that the Solar Energy Facility is not eligible for Net Metering due to the Local Distribution Company’s Net Metering capacity cap pursuant to St. 2010, c. 359, §29, and any cognate regulations or orders adopted pursuant thereto.

ARTICLE III FACILITY OWNERSHIP AND OPERATION

3.1 Title. Buyer shall not be entitled to any ownership interest in, and as between Buyer and Seller, Seller shall have title to the Solar Energy Facility and the Energy generated by the Solar Energy Facility, along with any Environmental Attributes, generation capacity attributes and related credits, to the extent permitted by law, and Renewable Energy Incentives generated or associated with the Solar Energy Facility, or the Energy generated by the Solar Energy Facility.

3.2 Notice of Commercial Operations Date. Subject to the provisions of this Agreement, Seller shall notify Buyer in writing in accordance with Section 11.1 within ten (10) Business Days after the Solar Energy Facility has achieved Commercial Operations.

ARTICLE IV PURCHASE AND SALE OF NET METERING CREDITS

4.1 Sale and Purchase of Net Metering Credits. Commencing on the Credit Start Date and ending on the last day of the Term, Seller agrees to designate to Buyer, and Buyer agrees to accept and compensate Seller as set forth herein, for a total of one hundred percent (100%) (the “**Buyer’s Percentage**”) of all Net Metering Credits generated by the Solar Energy Facility, as measured on a billing cycle basis (as such billing cycle is established by the Local Distribution Company) (the “**Billing Cycle**”). In connection with the above, Seller shall request (through completion of the applicable “Schedule Z” to the Tariff) that the Local Distribution Company allocate such total percentage to the Accounts, as further set forth in Exhibit A hereto.

a. In the event the Solar Energy Facility is a Class III Net Metering Facility, as such term is defined in 220 C.M.R. § 18.02, and the Local Distribution Company elects to purchase the Net Metering Credits from Buyer as Host Customer of the Solar Energy Facility, Seller and Buyer hereby acknowledge and agree that the proceeds from such purchase will be placed into a financial account in accordance with a Lockbox and Security Agreement, a form of which is attached hereto as Exhibit C. The Lockbox and Security Agreement will govern distribution of the Net Metering Credit proceeds from each Billing Cycle to Seller and Buyer in accordance with the provisions of this Section 4.1 and Section 4.2.

b. In the event that the Local Distribution Company elects to allocate the Net Metering Credits from the Solar Energy Facility to the Accounts, Seller shall estimate the Price for each Billing Cycle based upon the reporting from its revenue grade production meter, and invoice Buyer for Buyer’s Percentage of the Net Metering Credits identified in this Section 4.1. On a monthly basis, Buyer shall provide Seller with its invoices from the Local Distribution Company for the prior month and Seller shall review such invoices and report to Buyer any discrepancies between Seller’s estimate of Net Metering Credits and the Local Distribution Company allocation of Net Metering Credits for the prior month. Seller and/or Buyer, as the case may be, shall be entitled to a reimbursement and/or true-up only in the event that the discrepancy is due to Seller’s or the Local Distribution Company’s incorrect calculation of the amount of Net Metering Credits for the prior month. In no event shall Buyer be entitled to a reimbursement or true-up in the event that Buyer has paid Seller for a Net Metering Credits in a particular Billing Cycle that the Local Distribution Company carries forward on Buyer’s Account to a future Billing Cycle. Disputes with the Local Distribution Company and between the Parties shall be governed by Section 5.4.

4.2 Price. For each Billing Cycle, in accordance with the applicable procedure set forth in Section 4.1 (Sale and Purchase of Net Metering Credits), Buyer shall pay Seller

an amount equal to the product of (a) the cash value calculated by the Local Distribution Company of the Net Metering Credits allocated to Buyer's Accounts (whether actually credited or carried forward) by the Local Distribution Company as reflected on the invoice Buyer receives from the Local Distribution Company, multiplied by (b) the percentage ("**Percentage Discount**") set forth in Exhibit B-1 attached hereto (the "**Price**"). In the event that the sale and purchase of Net Metering Credits is conducted in accordance with Section 4.1(b), then Buyer shall for each Billing Cycle pay Seller's estimate of the Price, subject to rights of reimbursement and true-up set forth therein. Notwithstanding the foregoing and the Percentage Discount set forth on Exhibit B-1, the Seller represents and warrants that there is no other buyer of Net Metering Credits from the Solar Energy Facility that has a percentage discount that is lower than Seller's Percentage Discount for the purchase of Net Metering Credits from the Solar Energy Facility. In the event any other buyer purchasing Net Metering Credits from the Solar Energy Facility has a percentage discount that is lower than Seller's Percentage Discount, then the Seller shall notify the Buyer forthwith and the Percentage Discount herein shall be adjusted accordingly to be the same as the percentage discount offered to such other purchaser of Net Metering Credits from the Solar Energy Facility.

4.3 Title and Risk of Loss of Net Metering Credits. As between Seller and Buyer, title to and risk of loss of the Net Metering Credits will pass from Seller to Buyer upon allocation of the Net Metering Credits to Buyer's Accounts by the Local Distribution Company, as reflected in the invoices received by Buyer from the Local Distribution Company.

4.4 Governmental Charges.

a. Seller is responsible for any and all Governmental Charges attributable to the sale of Net Metering Credits to Buyer, imposed before title and risk of loss of the Net Metering Credits passes to Buyer pursuant to Section 4.3. Buyer is responsible for any Governmental Charges attributable to the purchase of Net Metering Credits by Buyer, imposed on and after title and risk of loss of the Net Metering Credits to Buyer pursuant to Section 4.3. Notwithstanding the foregoing, or any change in federal or state law which would no longer require Seller to pay personal property or real property taxes to Buyer, Seller's responsibility for personal property and real property taxes, and any obligation to pay such taxes, is set forth in the Tax Agreement attached hereto and incorporated herein by reference and the obligations under such Tax Agreement shall continue despite such change in federal or state law.

b. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Net Metering Credits hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefore, provide the other Party with all necessary documentation to evidence such exemption or exclusion.

4.5 Energy and Environmental Attributes. This Agreement shall not include the sale, assignment or other transfer to Buyer by Seller of any right, title or interest in any

Energy, or any Environmental Attributes or Renewable Energy Incentives, generation capacity credits, value or credits of any kind or nature (excluding Net Metering Credits allocated to Buyer under this Agreement), earned by or attributable to (a) the Solar Energy Facility or (b) the Energy generated by the Solar Energy Facility, including, without limitation, those resulting from or associated with the Federal Clean Air Act (including, but not limited to, Title IV of the Clean Air Act Amendments of 1990), renewable energy certificates, solar renewable energy certificates (or in either case any associated GIS Certificates), or any other state or federal acts, laws or regulations that provide offsets, allowances, or credits related to energy or emissions.

4.6 Guaranteed Minimum Output of Solar Energy Facility.

a. The “**Estimated Annual Production**” for each year of the Term is set as forth in Exhibit C attached hereto.

b. Beginning on the Commercial Operation Date, Seller shall cause the Solar Energy Facility to produce not less than seventy percent (70%) of the applicable Estimated Annual Production under Standard Insolation Conditions at the Premises as of the Effective Date during the Term, measured on a rolling, three Contract Year, cumulative basis (the “**Minimum Output Requirement**”); provided, however, that in calculating the Minimum Output Requirement it shall be reduced to the extent that failure to produce by the Solar Energy Facility is due to (i) Solar Energy Facility failure, damage or downtime attributable to third parties or emergencies, (ii) inverter failure or delayed repair of an inverter due to the claims process with the inverter manufacturer, (iii) resulting from general utility outages or any failure of any electrical grid, (iv) usage of the Premises, or buildings at or near the Premises, which may affect building permits, site permits and related requirements for the operation of the Solar Energy Facility, or that impact insolation striking the Solar Energy Facility; (v) an event of Force Majeure, or (vi) the acts or omissions of Buyer.

c. If at the end of any Contract Year, beginning with the end of the completion of the third Contract Year, the actual output of the Solar Energy Facility for the prior three Contract Years (the “**Actual System Output**”) does not equal or exceed the Minimum Output Requirement for such three Contract Year period (a “**Shortfall**”), in its next invoice Seller shall credit Buyer an amount equal to the product of (i) ten percent (10%) of the average of the LDC Retail Rate during such three Contract Year period, multiplied by (ii) the difference between the Actual System Output for such three Contract Year period and the Minimum Output Requirement for such three Contract Year period (a “**Shortfall Payment**”).

d. For purposes of calculations of any Shortfall that includes a Contract Year for which a previous Shortfall was measured (and for which Shortfall Payment was made), the actual generation used for such Contract Years in determining the Actual System Output shall be deemed to be the greater of (i) seventy percent (70%) of the Estimated Annual Production applicable to such Contract Year, or (ii) the actual output of the Solar Energy Facility during such Contract Year.

e. Buyer acknowledges and understands that solar power is an intermittent resource and the output of the Solar Energy Facility, which is dependent on the sun and other factors, will constantly vary and that no particular amount of output from the Solar Energy Facility is guaranteed in amount or time of delivery except as that provided for herein. Buyer further acknowledges that it must retain a primary source of power from the local electric distribution company.

f. Buyer acknowledges and agrees that Seller's sole liability to Buyer, and Buyer's sole remedy, for any Shortfall, or other failure by the Solar Energy Facility to produce the Minimum Output Requirement, shall be the payment of any Shortfall Payment as required by the terms of this Section 4.6.

ARTICLE V PAYMENT

5.1 Payment. Subject to Applicable Legal Requirements, Buyer shall provide Seller access to Buyer's Accounts solely for purposes of verifying the amount of Net Metering Credits that are allocated (by actual credit or carry forward) to Buyer's Accounts. Buyer shall also provide Seller, upon request therefor, with any other information reasonably necessary to permit Seller to verify the amount of Net Metering Credits allocated to Buyer's Accounts. Seller shall use all information to which it is provided access under this Section solely for the purposes stated in this Section and for no other purposes. All amounts owed to Seller shall be paid by wire transfer (or other method mutually agreeable to both Buyer and Seller in immediately available funds) to the account designated by Seller on Exhibit B attached hereto, which may be updated by Seller in writing from time to time within forty five (45) days of receipt of the invoice. Any undisputed payment not made to Seller within such 45-day period shall bear interest at the Interest Rate from the forty-sixth (46th) day through but excluding the date such payment is actually received by Seller. Such interest shall accrue at an annual rate equal to the Interest Rate.

5.2 Accounts Management. Buyer and Seller acknowledge and agree that the Schedule Z to the Interconnection Agreement setting forth Buyer's Accounts for allocation of Net Metering Credits may be amended twice per calendar year, or as otherwise agreed to by Buyer, as Host Customer, and the Local Distribution Company, in accordance with the Tariff. Seller and Buyer shall work together in good faith to jointly present any necessary Schedule Z amendments to the Local Distribution Company.

5.3 Records and Audits. Each Party shall keep, for a period of not less than two (2) years after the expiration or termination of this Agreement, records created or received relating to this Agreement that are necessary to permit verification of the accuracy of invoices, and Energy produced by the Solar Energy Facility under this Agreement. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine/audit the other Party's records pertaining to such transactions (and shall have no right to inspect any other records of the other Party that are not directly related to such transactions) during the other Party's normal business hours and, in the case of Seller's records, at the premises of Seller in Massachusetts, and

if no such premises exist in Massachusetts, at a location within fifty (50) miles of Buyer's principal offices to be mutually agreed upon by the Parties; notwithstanding the foregoing however, in no instance shall Buyer be entitled to examine or audit proprietary business information of Seller. In the event that Seller has reason to dispute the number of Net Metering Credits Buyer received from the Local Distribution Company, Buyer shall, at Seller's sole cost, provide reasonable assistance to Seller in support of such dispute.

5.4 Disputes with the Local Distribution Company and Between the Parties.

a. To the extent that Seller disputes that the amount of Net Metering Credits allocated by the Local Distribution Company to Buyer's Accounts in a Billing Cycle does not equal the amount of Net Metering Credits that Seller reasonably believes should have been allocated by the Local Distribution Company to Buyer's Accounts during such period (whether actually credited or carried forward), Seller may dispute such allocation with the Local Distribution Company, at Seller's sole cost, and Buyer will in good faith cooperate with Seller to investigate and remedy such discrepancy in consult with the Local Distribution Company. Upon resolution of such dispute, Buyer agrees to pay to Seller the Price related to any future Net Metering Credits allocated to Buyer's Accounts as a result of resolution of such dispute, as reflected in the invoices received by Buyer from the Local Distribution Company. Notwithstanding anything to the contrary herein, and subject to Buyer's requirement to pay Seller for Net Metering Credits that have been allocated but carried forward on Buyer's Accounts by the Local Distribution Company, under no circumstances will Buyer be required to pay Seller for Net Metering Credits that have not been allocated to Buyer's Accounts by the Local Distribution Company.

b. If a Party, in good faith, disputes an amount owed or paid as provided in this Agreement, the disputing Party shall promptly notify the other Party in writing of the basis for the dispute and pay the undisputed portion, if any, of such invoice no later than the due date, and withhold the disputed amounts, and the Parties shall resolve such dispute in accordance with the provisions of Section 11.5. Upon resolution of the dispute, any required payment shall be made within fourteen (14) Business Days of such resolution. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate per annum. The Parties shall only be entitled to dispute an amount owed or paid within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Section, the Parties shall follow the procedure set forth in Section 11.5. Any good faith failure of a Party to provide the written notice required under this Section 5.4(b) shall not operate as a waiver or release of such Party's right to dispute any amounts owed or paid under this Agreement.

ARTICLE VI OBLIGATIONS OF THE PARTIES

6.1 Net Metering.

a. Each Party's obligations under this Agreement are subject to the Solar Energy Facility qualifying for Net Metering as a Solar Net Metering Facility, subject to the provisions of M.G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00 and the Tariff.

b. Subject to the provisions of this Agreement, Buyer and Seller each agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the Solar Energy Facility to be eligible for and participate in Net Metering. The Parties acknowledge and agree that Buyer be the Host Customer for purposes of Net Metering the Solar Energy Facility.

6.2 Seller's Obligations.

a. Seller shall maintain accurate operating, maintenance and other records and all other data for the purposes of proper administration of this Agreement in accordance with the provisions of Section 5.3, including such records as may be required of Seller (and in the form required) by any Governmental Authority, and all records necessary to allow Buyer to verify the Energy produced by the Solar Energy Facility, the Net Metering Credits allocated to Buyer under this Agreement, and any and all amounts paid, or requested by Seller to be paid, by Buyer to Seller under this Agreement.

b. Subject to the terms of Section 11.14 and 11.15, Seller shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements, including any rule or order issued by the Department of Public Utilities regarding eligibility of the Solar Energy Facility for Net Metering.

c. Subject to the terms of Section 11.14 and 11.15, Seller shall perform all activities necessary to reserve and maintain an assurance of Net Metering for the Solar Energy Facility in accordance with any rule or order issued by the Department of Public Utilities regarding assurances of Net Metering or any such analogous reservation of Net Metering eligibility.

6.3 Buyer's Obligations.

a. Buyer shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

b. If requested by Seller, Buyer shall, only in its role as Host Customer, perform any and all necessary actions (at Seller's sole reasonable cost) to submit an application and any necessary documentation to support such application or any amendments thereto, to the appropriate Governmental Authority in accordance with

Applicable Legal Requirements, for reservation of an assurance of Net Metering for the Solar Energy Facility.

c. Buyer shall maintain accurate billing and other records and all other data for the purposes of proper administration of this Agreement in accordance with the provisions of Section 5.3, including such necessary to allow Seller to verify the Net Metering Credits allocated to Buyer under this Agreement. Buyer shall timely provide to Seller all information in Buyer's possession regarding the actual cash value of any Net Metering Credits that have been allocated to Buyer's Accounts in respect of the Solar Energy Facility, and to the extent such information is not in Buyer's possession, Buyer shall cooperate with Seller to obtain such information from the Local Distribution Company.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties. As of the Effective Date, 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 of its formation.

b. The Party has full legal capacity to enter into and perform this Agreement.

c. The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of the Party has full authority to do so and to fully bind the Party.

7.2 Limited Warranties. ***OTHER THAN THOSE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS, IMPLIED, ORAL, WRITTEN OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO THE WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY, OR WARRANTIES ARISING BY CUSTOM, TRADE USAGE, PROMISE, EXAMPLE OR DESCRIPTION, ALL OF WHICH WARRANTIES AND GUARANTIES ARE EXPRESSLY DISCLAIMED BY EACH PARTY AND WAIVED BY THE OTHER PARTY.***

ARTICLE VIII TERMINATION/DEFAULT/REMEDIES

8.1 Events of Default. The following shall each constitute an event of default ("***Event of Default***") by a Party.

a. The Party fails to make any material payment due under this Agreement within fifteen (15) days after such payment is due unless the specific amount of the payment not made is being contested.

b. The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement (other than those specified in clauses (a), (c), (d), (e) and (f) of this Section 8.1) 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 cure the same; provided further, that if such breach cannot, due to its nature and despite diligent efforts, be cured within ninety (90) days, the non-defaulting Party may terminate this Agreement under this Article 8.

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) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within thirty (30) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

e. The Party assigns this Agreement in whole or in part in violation of Article 10.

f. A representation or warranty made by the Party in Article 7 is discovered to have been materially false or misleading.

Buyer agrees to give written notice to any Lender (of which Buyer has written notice) upon an Event of Default by Seller hereunder.

8.2 Force Majeure. If by reason of Force Majeure, either Party is unable to carry out, either in whole or in part, any of its obligations contained herein, such Party shall not be

deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party promptly 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. Notwithstanding anything to the contrary in this Agreement, in the event a Force Majeure event continues for a period of one hundred eighty (180) consecutive days or more, either Party may terminate this Agreement. Upon termination of this Agreement by either Party pursuant to this Section 8.2, (i) neither Party shall have any obligation or financial liability to the other Party as a result of such termination, and (ii) in the event that Seller is the Party that terminates this Agreement and Seller operates the Solar Energy Facility within one (1) year from the termination date, after offering to Buyer the right to re-enter this Agreement on the same terms and conditions and after Buyer has had a period of thirty (30) days to reply to the same, Seller shall be permitted to sell, free and clear of any claim by Buyer, any Net Metering Credits contemplated under this Agreement to any third party.

8.3 Termination for Default.

a. Upon the occurrence of an Event of Default, the non-defaulting Party may (unless such Event of Default was fully cured by the defaulting Party before receipt of written notice of default hereunder) 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, which shall be at least five (5) Business Days after the giving of such notice, 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 without penalty or liability to the terminating Party; provided, however, that if the non-defaulting Party does not exercise its right to terminate pursuant to this Section 8.3(a) within one hundred and twenty (120) days after its discovery of an Event of Default, then the non-defaulting Party shall lose the right to terminate this Agreement with respect to the occurrence of such Event of Default and such Event of Default shall be deemed cured

b. In the event this Agreement is terminated as a result of an Event of Default, Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, any Net Metering Credits from Seller; provided, however, that Buyer shall continue to pay Seller for any Net Metering Credits that have or may continue to be allocated to Buyer by the Local Distribution Company until the Local Distribution Company revises the allocation designation pursuant to the provisions of the applicable Tariff, subject to the last sentence of this paragraph; and provided further that Seller notifies the Local Distribution Company promptly (but in no event more than fourteen (14) days) of such termination and takes all steps necessary and appropriate to notify the Local Distribution Company to cease the allocation of Net Metering Credits to

Buyer, including the filing of a Schedule Z with the Local Distribution Company within such fourteen (14) day period.

ARTICLE IX REMEDIES AND LIMITATION OF LIABILITY

9.1 Remedies. Subject to the limitations set forth in this Agreement, 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 agrees that it has a duty, under law, to mitigate damages that it may incur as a result of the other Party's non-performance under this Agreement. Seller understands and agrees that, in the event of any Event of Default by Buyer that permits Seller to terminate this Agreement pursuant to Section 8.3, then Seller's duty to mitigate damages will require Seller to exercise reasonable efforts to sell, use or market any Net Metering Credits that have not been, as of the termination date, and are not, after the termination date, allocated to Buyer, including filing a new Schedule Z (so that Net Metering Credits stop being allocated to Buyer's Account).

9.2 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM A BREACH OF THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, 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 such waiver shall be in writing and signed by the Party against whom it is to be enforced or such Party's agent. Consent or approval of Seller or Buyer 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. The failure of Seller or Buyer 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 right or remedy of Seller or Buyer herein specified or any other right or remedy that Seller or Buyer 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 right or defense that Seller or Buyer may be entitled to exercise hereunder.

ARTICLE X ASSIGNMENT

10.1 Prior Written Consent.

a. Except as set forth in Section 10.2, neither Party shall assign or in any manner transfer this Agreement, any rights or obligations included herein, or any part thereof without the prior written consent of the other Party, which consent may not be unreasonably conditioned, withheld or delayed, except that the following Seller assignments are permitted under this Agreement without the need to obtain the prior written consent of Buyer, but pursuant to advance written notice to Buyer, in connection therewith: (i) any assignment or transfer of this Agreement (or any rights or obligations hereunder) by Seller to an Affiliate of Seller or to a Person that purchases or will own (directly or indirectly) after such assignment the Solar Energy Facility; and (ii) any direct or collateral assignment by Seller of this Agreement to any Lender.

b. As a condition of any assignment (other than an assignment permitted pursuant to Section 10.1(a)(ii) or Section 10.2), the assignor and proposed assignee shall represent and warrant to the non-assigning Party in a signed writing that the assignee is capable of performing, and will perform, all of the obligations required of the assigning Party under this Agreement and that the assignee possesses the creditworthiness and experience necessary to operate and maintain the Solar Energy Facility.

c. Upon any assignment pursuant to Section 10.1(a)(ii) or Section 10.2 herein, the assignee shall confirm in writing to the non-assigning Party that such assignee is bound by this Agreement and is subject to all of the obligations required of the assigning Party, and any subsequent assignment of this Agreement by such assignee (other than an assignment permitted pursuant to Section 10.1(a)(ii) or Section 10.2) shall be subject to the provisions of Section 10.1(b).

10.2 Lender Accommodations.

a. Limited Grant to Lender. Seller, without the approval of Buyer, may grant an interest in its rights and obligations under this Agreement to any Lender. Promptly after granting such interest, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller's interest under this Agreement has been assigned, though, notwithstanding anything to the contrary in this Section or this Agreement, Buyer shall have no obligation to provide to any such Lender any notices issued or required to be issued to Seller pursuant to this Agreement unless and until Lender has assumed the rights and obligations of Seller through a permitted assignment under the terms of this Agreement or as a result of a foreclosure by Lender on

its security interest, and an assignment agreement has been executed by and between Seller and Lender, and a copy of such agreement has been provided to Buyer.

b. Rights of Lender. If Seller encumbers its interest under this Agreement as permitted by Section 10.1(a)(ii) or Section 10.2(a), the following provisions shall apply:

i. Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Article 8, and Lender shall have a period of ninety (90) days after receipt of notice pursuant to Section 8.1 to cure such default, provided however, that Lender shall have an additional thirty (30) day period of time thereafter to prevent or cure a default by Seller if Lender uses commercially reasonable efforts during the initial ninety (90) days after notice aforesaid, and Lender provides commercially reasonable written assurances that it will be able to prevent or cure such a default by Seller within such period of time thereafter.

ii. Buyer agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to Buyer with respect to this Agreement except to the extent this Agreement has been assigned to the Lender, or any Lender has otherwise assumed obligations of Seller hereunder; provided that Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.

iii. Upon the receipt of a written request from Seller, Buyer shall execute or arrange for the delivery of such documents as may be reasonably requested by Seller (at Seller's sole cost) to consummate any financing or refinancing, and which may provide that Buyer and Seller recognize the right of such Lender to assume the rights and obligations of Seller under this Agreement upon foreclosure of Lender's security interest; provided, however, that this provision shall not require Buyer to execute any documents or instruments which are contrary to Applicable Legal Requirements or which may increase Buyer's risk or obligations under this Agreement.

ARTICLE XI MISCELLANEOUS

11.1 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 effective upon delivery, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or facsimile transmission.

The communications shall be sent to the following addresses:

If to Seller:

KS Solar Five LLC
480 Pleasant Street, Suite B110

Watertown, MA 02472
Attn: Andrew Bernstein

If to Buyer:

Jeffrey Nutting
Town Administrator
Town of Franklin
355 East Central Street
Franklin MA 02038
508 520 4949 (phone)

with a copy to:

Lisa L. Mead
Blatman, Bobrowski & Mead, LLC
30 Green Street
Newburyport MA 01950
Phone (978) 463 7700
Fax (978) 463 7747

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

11.2 Confidentiality. If either Party or its representatives provides to the other Party or its representatives Confidential Information, and such information is specifically identified and clearly marked as "TRADE SECRET" or "CONFIDENTIAL," the receiving Party shall protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and refrain from using such Confidential Information except in the negotiation and performance of this Agreement. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that is required to be disclosed by a Governmental Authority, under Applicable Legal Requirements 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. Notwithstanding anything to the contrary in this Section 11.2, Confidential Information may be disclosed by Seller to any Lender (including any potential Lender) or any of its agents, consultants or trustees.

11.3 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

11.4 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.

11.5 Dispute Resolution. The Parties agree to use reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement.

a. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of formal negotiations between respective executive officers of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for formal negotiations shall be twenty (20) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

b. In the event that the Parties cannot timely resolve a dispute by formal negotiations, either Party may bring a suit seeking legal or equitable relief in any federal or state court in Massachusetts.

c. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to the dispute resolution process set forth in this Section to prevent irreparable harm that would be caused by a breach of this Agreement.

d. In any judicial action, the “Prevailing Party” shall be entitled to an award by the court of payment from the opposing Party of its reasonable costs and fees, including, but not limited to, reasonable attorneys’ fees, arising from the civil action. As used herein the phrase “Prevailing Party” means the Party who, in the reasonable discretion of the finder of fact, prevails in its claims or defenses in the civil action.

11.6 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.

11.7 Press Releases. The Parties shall use reasonable efforts to coordinate and 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 Net Metering Credits. To the extent reasonably possible, 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, any aspect of this Agreement, or the sale or purchase of Net Metering Credits. No such releases or other public statements (except as may be required by Applicable Legal Requirements, in which event such statement or filing, the relationship of the Parties shall be accurately and appropriately described) shall be made by either Party without the prior written consent of the other Party.

11.8 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. 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.

11.9 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.

11.10 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.

11.11 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, reasonably requested by the other and consistent with the terms of this Agreement for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. The Party making a request under this Section shall pay all reasonable costs and expenses incurred by the other Party in complying with any such request. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section. In the event of a termination of this Agreement for any reason, Buyer agrees to execute any documents as may be required by the Local Distribution Company to cease its receipt of Net Metering Credits from Seller so that Seller shall then be the recipient of such Net Metering Credits. No Party shall be required to execute, acknowledge and deliver any document which such Party reasonably believes is contrary to Applicable Legal Requirements.

11.12 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

11.13 Survival. The provisions of Article 1, Sections 3.1 (Title), 4.5 (Energy and Environmental Attributes), 5.3 (Records and Audits), 5.4 (Disputes with the Local Distribution Company and Between the Parties), 6.2 (Seller's Obligations), 6.3 (Buyer's Obligations), 7.2 (Limited Warranties), 8.3(b) (Termination for Default), 9.1 (Remedies), 9.2 (Limitation of Liability), and 9.3 (Waivers), and Article 11 (Miscellaneous), shall survive the expiration or earlier termination of this Agreement.

11.14 Obligation to Modify Agreement.

a. Subject to the requirements of Section 11.14(b), upon any Change in Applicable Legal Requirements, other than a Net Metering Program Cancellation, the Parties shall amend this agreement to conform to such Change in Applicable Legal Requirements to the extent such amendments are commercially reasonable. The Parties shall use their best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion. In the event the parties negotiating in good faith cannot come to an agreement concerning conforming to such new rules and/or regulations, then either Party shall have the right to terminate this Agreement.

b. Upon any Change in Applicable Legal Requirements, other than a Net Metering Program Cancellation, that results in Seller incurring additional third party costs to perform its obligations under this Agreement which are directly attributable to said Change in Applicable Legal Requirements totaling, in aggregate, (i) in Contract Years 1-5 more than fifty thousand dollars (\$50,000) per year (ii) in Contract Years 6-10 more than forty thousand dollars (\$40,000) per year, (iii) in Contract Years 11-15 more than twenty thousand dollars (\$20,000) per year, and (iv) in Contract Years 16-20 more than ten thousand dollars (\$10,000) per year, the Parties shall negotiate in good faith for a period of up to ninety (90) days to explore the possibility of amending this Agreement in order to mitigate such additional third party costs. If at the end of such ninety (90) day period the Parties are unable to agree to an amendment of this Agreement, then either Party shall have the right to terminate this Agreement.

c. Upon termination of this Agreement pursuant to this Section 11.14, (i) neither Party shall have any obligation or financial liability to the other Party as a result of such termination, and (ii) Seller shall be permitted to sell, free and clear of any claim by Buyer, any Net Metering Credits contemplated under this Agreement to any third party.

11.15 Net Metering Program Cancellation. In addition to any other termination rights in this Agreement, upon a Net Metering Program Cancellation, either Party shall have the right to terminate this Agreement upon seven (7) days prior notice to the other Party, in which event:

a. Seller shall have no further obligation to allocate Net Metering Credits to Buyer;

b. Buyer shall have no further obligation to accept the allocation of Net Metering Credits from Seller; and

c. neither Party shall be obligated to make any payment to other Party under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination (which shall include the obligation to pay the Price for all Net Metering Credits that are allocated to Buyer).

11.16 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. 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.

11.17 Obligations of Buyer. Notwithstanding anything to the contrary in this Agreement, any requirement that Buyer execute documents or instruments subsequent to the execution of this Agreement shall not require Buyer to execute any document or instruments which are contrary to Applicable Legal Requirements or which may increase Buyer's risk or obligations under this Agreement.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the Effective Date.

BUYER

SELLER

Town of Franklin

KS Solar Five LLC

By: _____

Name: Jeffrey Nutting

Title: Town Administrator

By: _____

Name: Andrew Bernstein

Title: Managing Member

List of Exhibits to Agreement

Exhibit A – Buyer’s Designation of Customer Accounts

Exhibit B – Seller’s Wire Transfer Account Information

Exhibit B1 - Price

Exhibit C – Minimum Output Requirement

Exhibit D – Tax Agreement

Exhibit E – Lease

EXHIBIT A

BUYER'S DESIGNATION OF CUSTOMER ACCOUNTS

EXHIBIT B

SELLER'S PAYMENT ACCOUNT INFORMATION

EXHIBIT B1

PRICE

Cash Value of Net Metering Credits:

Expected Net Metering Credit Calculation (as calculated in accordance with 220 CMR 18 and Section 1.06 of the Tariff):

18.04: Calculation of Net Metering Credits

(1) For a Class I Wind Net Metering Facility, Class I Solar Net Metering Facility, Class I Agricultural Net Metering Facility, Class II Net Metering Facility, and Net Metering Facility of a Municipality or Other Governmental Entity, each Distribution Company shall calculate for each Billing Period a Net Metering credit equal to the product of the:

- (a) excess kilowatt-hours, by time-of-use if applicable; and
- (b) sum of the following Distribution Company charges applicable to the rate class under which the Host Customer takes service:
 - 1. the default service kilowatt-hour charge (in the ISO-NE load zone where the Host Customer is located);
 - 2. the distribution kilowatt-hour charge;
 - 3. the transmission kilowatt-hour charge; and
 - 4. the transition kilowatt-hour charge.

Percentage Discount:

The "Percentage Discount" will be equal to ninety percent (90%).

Price:

As articulated in Section 4.2, for each Billing Cycle, in accordance with the applicable procedure set forth in Section 4.1 (Sale and Purchase of Net Metering Credits), Buyer shall pay Seller an amount equal to the product of (a) the cash value calculated by the Local Distribution Company of the Net Metering Credits allocated to Buyer's Accounts (whether actually credited or carried forward) by the Local Distribution Company as reflected on the invoice Buyer receives from the Local Distribution Company, multiplied by (b) the Percentage Discount.

EXHIBIT C

MINIMUM OUTPUT REQUIREMENT

	Estimated Annual Production	Minimum Output Requirement
Contract Year 1	6,000,000	4,200,000
Contract Year 2	5,958,000	4,170,600
Contract Year 3	5,916,294	4,141,406
Contract Year 4	5,874,880	4,112,416
Contract Year 5	5,833,756	4,083,629
Contract Year 6	5,792,919	4,055,044
Contract Year 7	5,752,369	4,026,658
Contract Year 8	5,712,102	3,998,472
Contract Year 9	5,672,118	3,970,482
Contract Year 10	5,632,413	3,942,689
Contract Year 11	5,592,986	3,915,090
Contract Year 12	5,553,835	3,887,685
Contract Year 13	5,514,958	3,860,471
Contract Year 14	5,476,354	3,833,448
Contract Year 15	5,438,019	3,806,613
Contract Year 16	5,399,953	3,779,967
Contract Year 17	5,362,153	3,753,507
Contract Year 18	5,324,618	3,727,233
Contract Year 19	5,287,346	3,701,142
Contract Year 20	5,250,334	3,675,234

EXHIBIT D

TAX AGREEMENT

EXHIBIT E

LEASE

PROPERTY TAX AGREEMENT

PROPERTY TAX AGREEMENT (the "**Agreement**") is entered into as of this ____ day of _____, 2013 (the "**Date of this Agreement**") by and among KS Solar Five LLC, a Massachusetts limited liability company having a mailing address of 480 Pleasant Street, Suite B110, Watertown, MA 02472 (together with its successors and permitted assigns, "**Kearsarge**"), Cistercians of Strict Observance, Inc., a Massachusetts corporation, with a mailing address of 300 Arnold Street, Wrentham, MA 02093 (the "**Property Owner**"), and the Town of Franklin, a municipal corporation duly established by law and located in the County of Norfolk, Commonwealth of Massachusetts (the "**Town**").

WHEREAS, Kearsarge Solar LLC, an affiliate of Kearsarge ("**Kearsarge Solar**") has entered into a Binding Memorandum of Understanding ("**MOU**") for a land license dated October 27, 2011 with the Property Owner, pursuant to which Kearsarge and Kearsarge Solar hold the exclusive right to lease (the "**Solar Lease**") from the Property Owner a portion of Property Owner's real property consisting of approximately 18 acres of real property located on the westerly side of Upper Union Street, Franklin, Massachusetts 02038 and commonly referred to as Tax Parcels 343-003 and 333-002 (such portion particularly depicted on the map attached hereto as Exhibit A) (the "**Solar Property**");

WHEREAS, as set forth in the MOU (attached hereto as Exhibit B), Kearsarge Solar, through its wholly owned subsidiary Kearsarge, intends on developing, owning and operating a ground-mounted solar photovoltaic facility with an estimated AC-rated capacity of up to (four) 4.0 megawatts ("**MW**") (AC) on the Solar Property and consisting of the following personal property: (a) solar modules, solar inverter systems and solar power generating facilities (including associated racking, foundations, support structures, braces and other structures and equipment), and other power generation facilities to be operated in conjunction with solar array installations; (b) electrical transmission facilities, electrical distribution and collector lines, wires and cables, conduit, footings, foundations, interconnection and/or switching facilities, circuit breakers, transformers, transformer and inverter pads, and energy storage facilities; (c) control, communications and radio relay systems and telecommunications equipment, including fiber, wires, cables, conduit and poles; (d) meteorological stations and solar energy measurement equipment; (e) erosion control facilities; (f) control buildings, control boxes and computer monitoring hardware, maintenance and storage units; (g) utility installations; (h) fences and other safety and protection facilities; and (i) other improvements, facilities, appliances, apparatus, materials, articles, components, raw materials, supplies, parts, systems, structures, machinery and equipment in any way related to or associated with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity or the construction of the planned ground-mounted solar photovoltaic facility (collectively, the "**Solar Facilities**");

WHEREAS, this Agreement shall not affect the assessment or tax policy of the underlying Solar Property, it being understood and agreed that land and any improvements (other than the Solar Facilities governed by this Agreement) shall be assessed, in accordance with its use, as real estate and are not part of this Agreement;

WHEREAS, Kearsarge is a generation company engaged in the business of producing, manufacturing or generating electricity, renewable energy or related services or products for retail sale to the public, as defined or used in the Massachusetts General Laws Chapter 59, §38H(b), and Chapter 164, §1;

WHEREAS, Kearsarge and the Town (each also referred to individually as "**Party**" or collectively as "**Parties**"), under the authority of M.G.L. c. 59, §38H(b), desire to execute this agreement for payment of taxes regarding the Solar Facilities in order to establish the annual payment of personal property taxes for the Solar Facilities;

WHEREAS, it is the intention of the Parties that Kearsarge make annual payments to the Town, on behalf of itself and the Property Owner, during the Term in lieu of real and personal property taxes for the Solar Facilities, in accordance with G.L. c.59, §38H(b) and the Massachusetts Department of Revenue regulations and requirements adopted in connection therewith;

WHEREAS, because Kearsarge and the Town need an accurate projection of their respective expenses and revenues with respect to the real and personal property that is taxable under law, the Parties believe that it is in their mutual best interests to enter into this Agreement establishing and stabilizing the payments that will be made with respect to all taxable real and personal property for the Solar Facilities for the term of the Agreement;

WHEREAS, Kearsarge and the Town have reached this Agreement as the result of good faith negotiations towards an annual payment to the Town in lieu of personal and real property taxes for the Solar Facilities that reflects the full and fair cash value of the personal and real property of the Solar Facilities over the life of the Solar Facilities as described more fully herein;

WHEREAS, Kearsarge and the Town acknowledge that a comprehensive agreement fixing and maintaining mutually acceptable, reasonable, and accurate tax payments for the Solar Facilities for each Fiscal Year beginning with Fiscal Year 2014 and ending on the earlier of (i) the last day of Fiscal Year 2034, or (ii) the last day of the Solar Lease, unless Property Owner takes possession of the Solar Facilities and continues to operate them or Kearsarge takes title to Solar Property and continues to operate the Solar Facilities (such period, the "**Term**") is appropriate and serves their respective interests; and

WHEREAS, the Parties intend that, during the term of the Agreement, except as otherwise provided herein, Kearsarge will not be assessed for any statutory real and personal property taxes attributable to the Solar Facilities to which they might otherwise be subjected under Chapter 59 of the General Laws, and this Agreement will provide for the exclusive payments in lieu of such real and personal property taxes during the Term; provided, however, that, the Parties do not intend for this Agreement to affect any taxes and payments that may be owed by Kearsarge to the Town except for real and personal property taxes attributable to the Solar Facilities; nor do the Parties intend for this Agreement to affect any other payments that may be legally owed by Kearsarge to the Town, including, but not limited to, taxes for personal property other than those attributable to the Solar Facilities, real property taxes and payments for services provided by the Town to the Solar Facilities and the Property, including but not limited to, water and sewer services, betterment assessments, and similar payment obligations.

NOW, THEREFORE, in consideration of the mutual promises set forth below, Kearsarge, intending to bind itself any subsequent successors and assigns, and the Town agree as follows:

1. **Basis and Purposes for this Agreement.** The Parties acknowledge that this Agreement is fair and beneficial to each of them because it resolves all tax issues between them regarding the Solar Facilities with resulting alleviation of economic and financial uncertainty. Moreover, both Parties value the tax and economic stability achieved by this Agreement because it will result in steady, predictable and reasonable payments by Kearsarge and any subsequent successors and assigns to the Town in respect of personal and real property taxes for the Solar Facilities over the Term of this Agreement. The Parties acknowledge that this Agreement contemplates any increases in personal and real property taxes on the Solar Facilities that may be assessed solely as a result of the construction and operation of the Solar Facilities during the Term. Kearsarge agrees that the Annual Payments will not be reduced on account of a depreciation factor or reduction in the Town's tax rate, which factors have been anticipated and are reflected in the Annual Payments set forth in Appendix I.

2. **Payment of All Personal and Real Property Taxes.** The total amount which Kearsarge, and any subsequent successors and assigns, shall pay to the Town each Fiscal Year with respect to personal and real property taxes for the Solar Facilities, commencing with Fiscal Year 2014 and continuing

throughout the Term, shall be the amount set forth set forth in Appendix I (the "**Annual Payment**"). The Parties hereby agree that the Annual Payment (i) will be in lieu of any property taxes which would otherwise be owed by Kearsarge with respect to the Solar Facilities to the Town for any Fiscal Year during the Term, and (ii) that by making the Annual Payments, Kearsarge hereby fulfills any obligation that Kearsarge may owe to the Town to pay property taxes with respect to the Solar Facilities.

3. Payments and Date of Payments. The Parties agree that the Annual Payment for the first Fiscal Year in which taxes would be assessed on the Solar Facilities will be pro rated based on the date that the Solar Facilities achieve commercial operation (the "**Commercial Operation Date**"). For each Fiscal Year, Kearsarge and any subsequent successors and assigns shall make four (4) quarterly payments on or before the 1st of each August, November, February and May of such Fiscal Year of one quarter of the Annual Payment for such Fiscal Year (each a "**Quarterly Payment**"). Payments are to be remitted to the Tax Collector, 355 East Central Street, P.O. Box 367 Franklin, Massachusetts 02038. Failure to make timely payments shall result in interest and fees as set forth in G.L. c. 59§57 assessed against Kearsarge and/or the Property Owner, as appropriate. Kearsarge acknowledges that this Agreement and its Appendix shall serve as sufficient notice of when payments are due and further acknowledges that the Town will not send quarterly invoices or reminders.

4. Termination Date; Definition of Fiscal Year. This Agreement shall terminate as of the conclusion of Fiscal Year 2034 unless both Parties either agree to cancel this Agreement or extend this Agreement, with its current or other terms as the Parties may agree upon in writing. The term "**Fiscal Year**", as used in this Agreement, shall mean the period of time beginning on July 1 of each calendar year and ending on June 30 of the subsequent calendar year. By way of example, a reference to "Fiscal Year 2013" shall mean the peirod of time beginning on July 1, 2012 and ending on June 30, 2013.

5. Good Faith. This Agreement is entered into in good faith to achieve predictability and economic stability for both Parties by establishing reasonable, accurate and reliable tax agreement payments for Keasarge in consideration of the full, fair cash value of the Solar Facilities, to the extent such value is reasonably determinable as of the Date of this Agreement. Accordingly Keasarge and the Town agree that neither Party shall seek to use the fair market values established by this Agreement in any future proceedings regarding the value of the Solar Facilities or in any other proceeding regarding the value of the Solar Facilities, except as provided in paragraph 9 hereof.

6. Bankruptcy and Default.

- a. In the event that Keasarge or its successors and assigns in this Agreement files for bankruptcy protection, this Agreement shall become null and void and any taxes accrued for the Solar Facilities from the Date of this Agreement shall be calculated in accordance with the Massachusetts General Laws and not calculated or governed by this Agreement; provided, however, that Kearsarge or its successors and assigns in this Agreement shall receive a credit against any recalculation of taxes accrued for the Solar Facilities for all Quarterly Payments, or portions thereof, received by the Town.
- b. In the event that Keasarge shall (i) Default hereunder (ii) defalut under the Solar Lease such that the Property Owner properly terminates the Solar Lease, or (iii) default under that certain Net Metered Power Purchase Agreement by and between Kearsarge and the Town (the "**NMPPA**") such that the Town properly terminates such agreement, then this Agreement shall become null and void and any taxes accrued for the Solar Facilities from the Date of this Agreement shall be calculated in accordance with the Massachusetts General Laws and not calculated or governed by this Agreement; provided, however, that Kearsarge or its successors and assigns in this Agreement shall receive a credit against any recalculation of taxes accrued for the Solar Facilities for all Quarterly Payments, or portions thereof, received by the Town.

- c. The term "**Default**" hereunder shall mean that (i) Kearsarge does not make a Quarterly Payment in accordance with the terms set forth in Section 3 above and such failure to pay is not remedied within thirty (30) days after receipt of written notice thereof from the Town of such failure to pay, or (ii) that any Party hereto fails to perform or comply with any material covenant or agreement set forth in this Agreement (other than those specified in clause (a) or (c)(i) of this Section 6) 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 cure the same; provided further, that such extended time shall in no event be longer than ninety (90) days.

7. Amendment of the Solar Facilities.

- a. This Agreement and the Annual Payments shall be amended proportionately from what is included on Appendix I as of the Date of this Agreement to reflect the final, as-built size of the Solar Facilities on the Commercial Operation Date (the "**Capacity**").
- b. To the extent that the Capacity is increased by Kearsarge after the Commercial Operation Date, the remaining Annual Payments will be increased proportionately from what is then included on Appendix I. To the extent that Kearsarge reduces the Capacity after the Commercial Operation Date, the remaining Annual Payments will be decreased proportionately from what is then included on Appendix I.

8. Payment Collection. Notwithstanding anything to the contrary in this Agreement, Kearsarge shall be liable for the personal property taxes and in the event Kearsarge fails to pay in a timely manner the real Property taxes, then Property Owner shall be jointly liable for payments due for the real property taxes under this Agreement. All rights and remedies available to the Town for the collection of taxes shall apply to the Annual Payments hereunder, including, but not limited to, the rights and remedies provided in G.L. c. 59 and G.L. c. 60, and all such rights and remedies are hereby reserved notwithstanding anything to the contrary herein. The provisions of the General Laws, including but not limited to G.L. c. 59 and G.L. c.60, will govern the establishment of liens and the collection of any Annual Payments as though said payments were real or personal property taxes due and payable to the Town.

9. Tax Status. The Town agrees that during the Term, the Town will not assess Kearsarge or the Property Owner for any personal or real property taxes attributable to the Solar Facilities to which might otherwise be subject under Massachusetts law in the absence of this Agreement, and the Town agrees that this Agreement will exclusively govern the payments of such taxes; provided, however, that this Agreement does not affect, and will under no circumstances preclude the Town from assessing, any other taxes, fees, charges, rates or assessments which Kearsarge and the Property Owner may be obligated to pay, including but not limited to personal or real property taxes other than those attributable to the Solar Facilities, excise taxes on vehicles due pursuant to G.L. c.60A, and any fees or charges for services provided by the Town to the Solar Facilities, including but not limited to, water and sewer services.

10. Advice of Counsel. The Parties have entered into this Agreement only after full and due consideration thereof and with the advice of their respective counsel.

11. Severable. The Parties agree that, in the event any term of this Agreement or the application of any such term shall be held invalid by any court having jurisdiction, the other terms of this Agreement and their application shall not be affected thereby and shall remain in full force and effect, provided that the remaining terms continue to preserve the essential economic terms of this Agreement.

12. **Cooperation.** Kearsarge, on behalf of itself and any successors to or assigns of its interest in this Agreement, and the Town shall act in good faith to carry out this Agreement and to resolve amicably any disputes or disagreements that may arise hereunder.

13. **Specific Performance.** The Parties agree that any violation of this Agreement may cause irreparable injury for which money damages may not be a sufficient remedy. In the event that either Party Defaults, the other Party shall be entitled to specific performance and injunctive relief or other equitable relief as a remedy for such Default, without the posting of a bond, in addition to any other remedies that may be available in law or equity. Notwithstanding the foregoing, neither Party shall be held liable for any punitive, consequential, special or indirect damages.

14. **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.

15. **Entire Agreement.** This Agreement and the NMPPA are the full, final and complete expression of the Parties' agreement with respect to personal property taxes for the Solar Facilities over the Term. Except for the terms expressly set forth herein, this Agreement shall not be construed to substitute for, or supercede any requirement of, Kearsarge or its agents or assigns, from full compliance with all rules, regulations and requirements governing the development, construction or operation of the Solar Facilities, including, but not limited to, the Franklin Zoning Bylaw, State Building Code and all other municipal, state and federal laws and regulations.

16. **Lender's Rights.** The Town shall send a copy of any notice of Default sent to Kearsarge or Kearsarge Lender (as such term is defined in the NMPPA), as applicable, if known by the Town, by certified mail at the same time such notice is sent to Kearsarge and no such notice of default shall be effective unless and until a copy of such notice has been delivered to such Lender. Kearsarge or Kearsarge's Lender, as applicable, shall have the same time and rights to cure any Default as Kearsarge, and the Town shall accept a cure by such Lender as if such cure had been made by Kearsarge. Kearsarge shall provide written notice to the Town as to the name and address of any Lender for such notices to be sent.

17. **Kearsarge's Assignment.** Kearsarge, or any successors to or assigns of its interest in this Agreement, shall have the right to assign this Agreement to any bona fide purchaser of the Solar Facilities, transferee, or assignee of this Agreement, with the prior written consent of the Town Council of the Town of Franklin, such consent not to be unreasonably withheld or delayed; provided, however, that (i) Kearsarge, or any successor to or assigns of its interests in this Agreement, may make any direct or collateral assignment of this Agreement to any Lender without receiving the prior written consent of the Town Council of the Town of Franklin, and (ii) that a change in control or ownership of Kearsarge or any successors to or assigns of its interest in this Agreement shall not require the prior written consent of the Town Council of the Town of Franklin. In connection with the foregoing required consent, Kearsarge, or any successors to or assigns of its interest in this Agreement, shall evidence to the Town that said purchaser, transferee or assignee has the financial, managerial, and technical capacity to construct and operate the Project and perform the obligations of this Agreement. All covenants, agreements, terms and conditions contained in this Agreement shall apply to and be binding upon the parties, their assigns and successors. Should this Agreement be assigned, sold or transferred, Kearsarge, or any successors to or assigns of its interest in this Agreement, shall provide written notice to the Town of such sale, transfer, or assignment.

THE SIGNATURE PAGE, EXHIBITS AND APPENDIX I FOLLOW

Executed as of this as of this ____ day of _____, 2013 by the undersigned who represent that they are fully and duly authorized to act and enter into this Agreement on behalf of the Parties hereto.

KS SOLAR FIVE LLC

By: _____

Name: Andrew J. Bernstein

Title: Managing Member

TOWN OF FRANKLIN

By: _____

Name: Jeffery Nutting

Title: Town Administrator

By: _____

Name:

Title: Board of Assessors

CISTERCIANS OF STRICT OBSERVANCE, INC.

By: _____

Name:

Title:

Solar Property

Approximately 18 acres of real property located on Upper Union Street, Franklin, Massachusetts, on Tax Parcels 343-003 and 333-002as depicted on the following plan. Final acreage subject to change pending project permitting, construction surveys and final construction design.

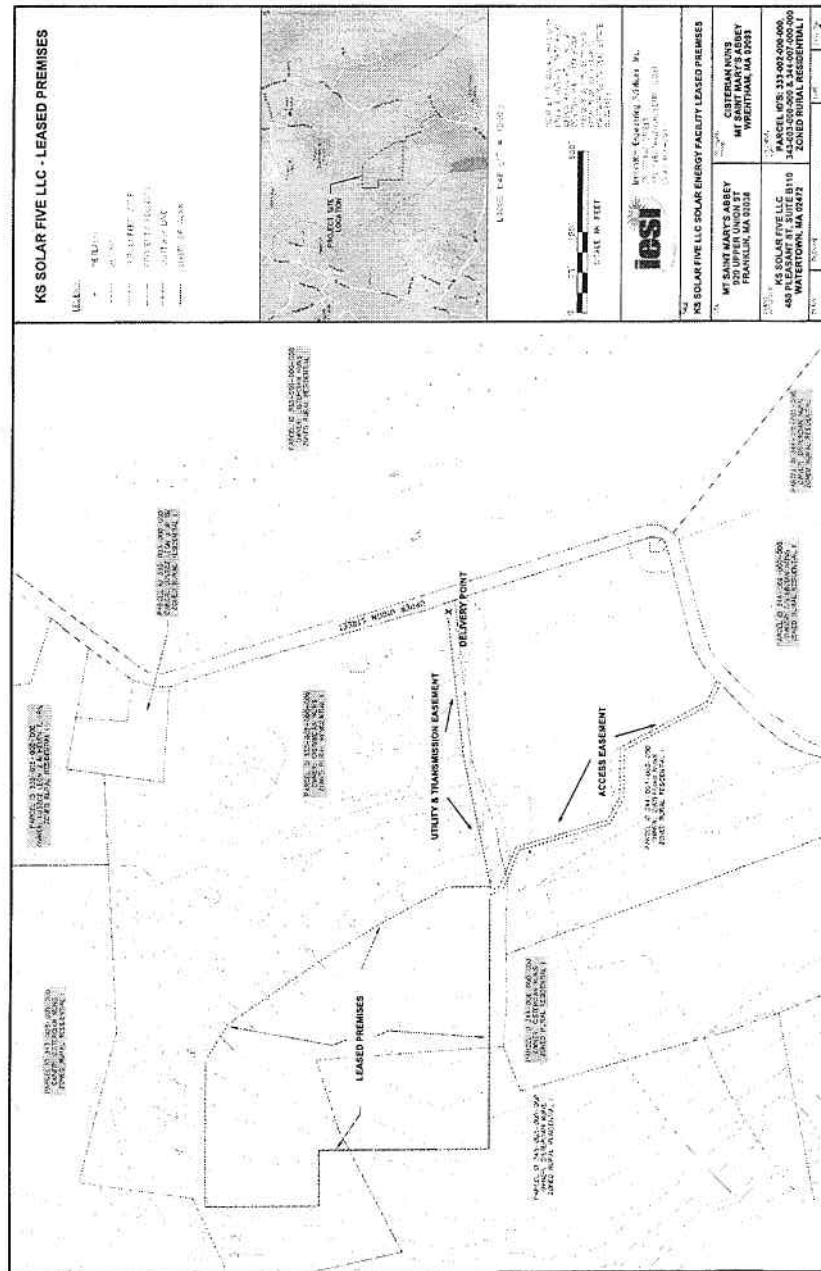


EXHIBIT A

Exhibit B
MOU

EXHIBIT B

BINDING MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") sets forth the basic terms upon which Mount Saint Mary's Abbey ("Owner"), as owner of a certain piece(s) of property located at between 929 and 1603 Upper Union Street, Franklin, Massachusetts (the "Site"), will lease along with appurtenant rights for development of a solar project (the "Solar Project") to Kearsarge Solar LLC, a Massachusetts limited liability company or a new entity created by Kearsarge Solar LLC ("Kearsarge"). Each party understands and acknowledges that this is a binding MOU and therefore creates a legally binding contract until terminated in accordance with Section 9 below or superseded by the Definitive Project Agreements (as described below).

The parties agree to the material terms set forth in this MOU, and agree to proceed expeditiously and in good faith to complete the Definitive Project Agreements on or before February 29, 2012 (the "Closing Date").

1. **Parties.** The parties to the Definitive Project Agreements will be Owner and Kearsarge. The role of Kearsarge shall be to secure all regulatory and other approvals; design, finance, and construct the Solar Project; and operate and maintain it after it is constructed. Owner's role shall be to cooperate with the permitting efforts and other such tasks as reasonably requested by Kearsarge and to assist in negotiation of interconnection and power sales agreements with prospective purchasers as reasonably requested by Kearsarge.

2. **Definitive Project Agreements.** The parties agree to use their best efforts to expeditiously negotiate Definitive Project Agreements as set forth below:

A. **Lease.** Under the Lease, Owner will lease Kearsarge the right to own, construct and operate the Solar Project on the Site. Within the Lease, there will be an agreement to provide Kearsarge with a parcel(s) of land on the Site for the location of the Solar Project for a period of 20 years with an optional 5 year renewal, from the commencement of commercial operation. Owner will also provide additional temporary access and construction areas needed in support of the Solar Project. All property will be restored to its original state after construction. Final lease payments shall be determined as part of the Definitive Project Agreements and will depend on factors including interconnection costs, civil engineering work, power sales contracts and installation costs. Kearsarge shall make annual rental payments of no less than \$20,000 per installed megawatt (Direct Current) to Owner. Lease payments will be delivered on a quarterly basis and shall increase annually by two per cent (2.0%). Kearsarge will consult with Owner in the design and siting of the Solar Project. The Lease will contain other customary and reasonable provisions for similar commercial leases for solar projects.

B. **Related Agreements.** Owner shall also execute, at request to Owner, other agreements as reasonably requested by Kearsarge in order to allow for the development, financing, installation, operation, and maintenance of the Solar Project at the Site.

C. **Additional Considerations.** Kearsarge shall offer Owner a bonus payment based on the price received for Electricity in the Power Purchase Agreement signed as part of the project. If the PPA price in year 10 is greater than 2 times the starting PPA price, the Owner will

receive a special bonus payment equal to 75% of the annual lease payment and will receive in year 15 another bonus payment equal to 50% of the annual lease payment in year 15.

3. **Other Conditions.** The consummation of the transactions contemplated by the Definitive Project Agreements will be conditioned on Kearsarge and/or its affiliates or permitted assigns completing due diligence and obtaining financing for, among other things, construction of the Solar Project. The terms of such financing must be acceptable to Kearsarge in its sole discretion.

4. **Exclusivity.** Until the Closing Date, Owner will not, directly or indirectly, through any representative or otherwise, solicit or entertain offers for, negotiate with or in any manner encourage, discuss, accept or consider any proposal of any other person relating to construction of a project on the Site that produces energy.

5. **Access to Information; Due Diligence; Feasibility Study.** Until the Closing Date, or the date this MOU is terminated by the parties, whichever occurs sooner, Owner will provide Kearsarge with full and free access to the Site, solar data and other engineering reports, permits, plans and other documents which are reasonably requested by Kearsarge, subject to the confidentiality provision below. In addition, Owner agrees to allow Kearsarge (and its contractors) to conduct all activities on the Site necessary to perform a project feasibility study. Owner understands that prior to the Closing Date, Kearsarge will be attempting to obtain applicable regulatory approvals and enter into contracts with power purchasers, and Owner agrees to provide commercially reasonable assistance with the permitting and contracting efforts.

6. **Confidentiality.** Except as and to the extent required by law, without the prior written consent of the other party, neither party to this MOU will disclose or use, and will direct its/their representatives not to disclose or use any information shared by either party that is specifically marked or otherwise designated as confidential.

7. **Disclosure.** Except as and to the extent required by law, without the prior written consent of the other party, neither party to this MOU will make any public comment, statement, or communication with respect to, or otherwise disclose or to permit the disclosure of the existence of discussions regarding the transactions proposed in this MOU. If either party is required by law to make any such disclosure, such party must first provide to the other party the content of the proposed disclosure, the reasons that such disclosure is required by law, and the time and place that the disclosure will be made.

8. **Consents/Permitting.** Kearsarge and Owner will reasonably cooperate with each other and proceed, as promptly as is reasonably practical, to obtain any consents, approvals or permits necessary to consummate the transactions contemplated by this MOU. All permits, studies, agreements and design documents associated with the Solar Project shall be the exclusive property of Kearsarge and Kearsarge shall bear all costs.

9. **Termination/Closing Date.** This MOU will automatically terminate on the Closing Date when it will be superseded by Definitive Project Agreements, or it may be terminated earlier upon mutual agreement of the parties. Upon mutual termination of this MOU, the parties

will have no further obligation hereunder, except as stated in paragraphs 4 (Exclusivity), 6 (Confidentiality), and 10 (Costs), all of which shall survive any such termination, unless otherwise agreed to by the parties. In the event the Definitive Project Agreements are not completed by the Closing Date despite the good faith efforts of the parties, both parties agree to a reasonable extension of the Closing Date until all agreements are completed.

10. **Costs.** Except as noted above, Kearsarge and Owner shall be responsible for their respective costs and expenses incurred in connection with negotiation and consummation of this MOU and the Definitive Project Agreements.

11. **Entire Agreement.** This MOU constitutes the entire agreement between the parties and supersedes all prior oral or written agreements, and understandings between the parties as to the subject matter thereof. This MOU may be amended or modified only by a written agreement executed by both parties.

12. **Successors and Assigns.** Kearsarge may assign its rights under this MOU to any of its affiliates (including a special purpose entity organized to own and operate the Solar Project) without Owner's consent. In addition, Kearsarge may assign its rights under this MOU to other parties with Owner's consent, such consent not to be withheld or unreasonably delayed.

13. **Counterparts.** This MOU may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that a scanned or electronically reproduced copy or image of this MOU bearing the signatures of the parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this MOU notwithstanding the failure or inability to produce or tender an original, executed counterpart of this MOU and without the requirement that the unavailability of such original, executed counterpart of this MOU first be proven.

14. **Governing Law.** This MOU shall be construed under and governed by the internal laws of the Commonwealth of Massachusetts without regard to its conflict of laws and provisions.

15. **Dispute Resolution.** Unless otherwise expressly provided for in this MOU, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this MOU between the parties. The parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this MOU. In the event that the parties cannot resolve a dispute by informal negotiations, the parties agree to submit the dispute to mediation. The parties shall propose and agree upon a neutral and otherwise qualified mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed thirty days, unless such time period is modified by written agreement of the parties. 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. In the event that the parties cannot resolve a dispute by informal negotiations or mediation, venue for judicial enforcement shall be Middlesex County Superior Court Business Litigation Session.

Commonwealth of Massachusetts. Each party hereby waives any right that it might have to a jury trial. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this MOU. In any judicial action, the "Prevailing Party" shall be entitled to payment from the opposing party of its reasonable costs and fees, including but not limited to attorneys' fees, arising from the civil action. As used herein, the phrase "Prevailing Party" shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

16. **Waiver.** No waiver of any provision of this MOU shall be effective unless in writing and signed by the Party against whom such waiver is sought to be enforced. No failure or delay by any Party to insist upon strict compliance with any term of this MOU shall be deemed a waiver of such term. No waiver or relinquishment of any right under this MOU at any one or more times shall be deemed as a waiver or relinquishment of such power or right at any other time.

17. **Miscellaneous Construction.** The section and subsection headings used herein are for convenience of reference only, are not a part of this MOU and are not to affect the construction of, or be taken into consideration in interpreting, any provision of this MOU. In the interpretation and construction of this MOU, the Parties acknowledge that the terms hereof reflect extensive negotiations between the Parties and that this MOU shall not be deemed, for the purpose of construction and interpretation, that either party drafted this MOU.

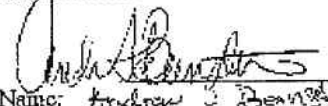
18. **Authority.** Each of the persons executing this MOU represents that he/she is authorized to execute on behalf of and to therefor bind the entity, if any, indicated below.

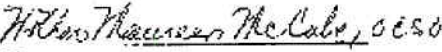
IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the dates written below.

FOR KEARSARGE:

FOR OWNER:

KEARSARGE ENERGY LLC, AS
GENERAL PARTNER:


Name: Andrew J. Bennett
Title: Managing Partner
Dated: 10-27-2011


Name: William Thomas McCabe, CEO
Title: Robbers and President
Dated: Oct. 27, 2011

FRANKLIN PERSONAL PROPERTY TAXES as of 02-28-2013

Project Size	4 MW
Total Estimated Construction Costs	\$6,268,800
Personal Property Tax Rate for Fiscal Year 2013	\$14.34
Projected Annual Increase to Tax Rate	2.50%
Land Area	18
Value Per Acre	\$200,000

<u>Project Fiscal Year</u>	<u>Depreciation</u> <u>Schedule</u>	<u>Personal Property</u> <u>Value</u>	<u>Industrial</u> <u>Land Value</u>	<u>Est.</u> <u>Tax Rate</u>	<u>Annual</u> <u>Property Tax</u>
2014	1.00	\$6,268,800	\$3,600,000	\$14.70	\$145,071
2015	0.80	\$5,015,040	\$3,600,000	\$15.07	\$129,807
2016	0.60	\$3,761,280	\$3,600,000	\$15.44	\$113,689
2017	0.40	\$2,507,520	\$3,600,000	\$15.83	\$96,684
2018	0.25	\$1,567,200	\$3,600,000	\$16.23	\$83,843
2019	0.25	\$1,567,200	\$3,600,000	\$16.63	\$85,939
2020	0.25	\$1,567,200	\$3,600,000	\$17.05	\$88,088
2021	0.25	\$1,567,200	\$3,600,000	\$17.47	\$90,290
2022	0.25	\$1,567,200	\$3,600,000	\$17.91	\$92,547
2023	0.25	\$1,567,200	\$3,600,000	\$18.36	\$94,861
2024	0.25	\$1,567,200	\$3,600,000	\$18.82	\$97,232
2025	0.25	\$1,567,200	\$3,600,000	\$19.29	\$99,663
2026	0.25	\$1,567,200	\$3,600,000	\$19.77	\$102,155
2027	0.25	\$1,567,200	\$3,600,000	\$20.26	\$104,709
2028	0.25	\$1,567,200	\$3,600,000	\$20.77	\$107,326
2029	0.25	\$1,567,200	\$3,600,000	\$21.29	\$110,010
2030	0.25	\$1,567,200	\$3,600,000	\$21.82	\$112,760
2031	0.25	\$1,567,200	\$3,600,000	\$22.37	\$115,579
2032	0.25	\$1,567,200	\$3,600,000	\$22.93	\$118,468
2033	0.25	\$1,567,200	\$3,600,000	\$23.50	\$121,430
					\$2,110,152



TOWN OF FRANKLIN

RESOLUTION 13-11

Authorization to Expend Funds in Excess of Available Appropriations

NOW THEREFORE BE IT ORDERED that in accordance with M.G.L. Chapter 44 §31D, the Town Council authorizes the expenditure of funds in excess of the available appropriation for snow and ice removal upon approval by the Town Administrator.

This Resolution shall become effective according to the rules and regulations of the Town of Franklin Home Rule Charter.

DATED: _____, 2013

VOTED:

UNANIMOUS _____

A True Record Attest:

YES _____ **NO** _____

ABSTAIN _____

Deborah L. Pellegrini
Town Clerk

ABSENT _____

Judith Pond Pfeffer, Clerk
Franklin Town Council

OFFICE OF THE TOWN ADMINISTRATOR



MEMORANDUM

DATE: March 1, 2013
TO: Town Council
FROM: Jeffrey D. Nutting, Town Administrator
RE: FY 14 Trash Fee Increase

I am requesting the Town Council approve an \$8 per year increase in the FY 14 trash fee in conjunction with the increase in the annual budget of over \$130,000. If you approve the fee, we will still need to transfer about \$87,000 for surplus to balance the budget. This will leave a surplus of about \$250,000, which can be used over the next few years to help slow the rate of increases in the trash fee. Please see the rate history below, the proposed FY 14 rate, and the potential rates for future years, using the surplus to offset costs.

Please call with questions.

Rate History

FY 05 fee \$300	
FY 06 fee \$216	
FY 07 fee \$240	
FY 08 fee \$232	
FY 09 fee \$244	
FY 10 fee \$244	
FY 11 fee \$220	
FY 12 fee \$220	35 Gallon Containers

FY 13 fee \$204.....	\$184
FY 14 fee \$212.....	\$192
*FY 15 fee \$220.....	\$200
*FY 16 fee \$228.....	\$208

**Potential future fees*



Sponsor: Administration

TOWN OF FRANKLIN
BYLAW AMENDMENT 13-700

AMENDMENT OF SERVICE FEES:
Solid Waste and Recycling

**A BY-LAW TO AMEND THE CODE OF THE TOWN OF FRANKLIN, BE IT ENACTED
BY THE FRANKLIN TOWN COUNCIL THAT:**

**Chapter 82 of the Code of the Town of Franklin, Appendix A, "List of Service Fee
Rates" is hereby amended as attached (add underlined text, delete struck).**

This By-Law amendment shall become effective July 1, 2013.

DATED: _____, 2013

A True Record Attest:

**Deborah L. Pellegri
Town Clerk**

VOTED:

UNANIMOUS _____
YES _____ NO _____
ABSTAIN _____
ABSENT _____

**Judith Pond Pfeffer, Clerk
Franklin Town Council**

**APPENDIX A
LIST OF SERVICE FEE RATES**

DEPARTMENT	FEE	FY13 RATE	FY 14 RATE	SERVICE CATEGORY
PUBLIC WORKS				
	CURBSIDE TRASH (ANNUAL)			
	Fee Using 65 Gallon Trash Cart	\$204.00	<u>\$212.00</u>	UTILITY
	Fee Using 35 Gallon Trash Cart	\$184.00	<u>\$192.00</u>	<u>UTILITY</u>