

**TOWN COUNCIL AGENDA**  
**April 16, 2018**  
**7:00 P.M.**

The Town Council meeting will be held in the Moose Hill Council Chambers, Town Hall, 268B Mammoth Road, Londonderry, NH. Regular meetings are cablecast live and videotaped for the convenience of our viewers at home. 7:00 PM.

**A. CALL TO ORDER**

**B. PUBLIC COMMENT**

- 1.) Update of New Hours for the Town Clerks Office  
**Presented by Sherry Farrell**
- 2.) Recognition of Telecommunications Officers and Introduction of New Employees  
**Presented by Chief Hart**

**C. PUBLIC HEARING**

- 1.) **Ordinance #2018-01** – An Amendment to the Municipal Code Title III, Land Use Codes, Chapter IV Conservation Areas, Relating to Kendall Pond Parking Lots  
**Presented by Kevin Smith**

**D. OLD BUSINESS**

- 1.) Town Council Public Comment Rules Update  
**(Continued from April 2)**

**E. NEW BUSINESS**

- 1.) Review of Contract between the Town of Londonderry and Superfund Solar, LLC  
**Presented by Steve Cotton and Chris Stewart**
- 2.) **Order #2018-07** – An Order Relative to the Expenditure of Maintenance Trust Funds for Various projects  
**Presented by Steve Cotton**
- 3.) **Resolution #2018-03** An Amendment to Municipal Code Title VI, Town Policy, Chapter XVII, Financial Management Policy, Section XI, Budget Guidelines  
**Presented by Kevin Smith**
- 4.) **Resolution #2018-04** A Resolution Relative to the Process for Conservation Land Acquisitions  
**Presented by Kevin Smith**

- 5.) **Resolution #2018-05** Sanctioning of the Londonderry Soccer Club  
**Presented By Kevin Smith and Art Psaledas**
- 6.) **Ordinance #2018-02** An Amendment to Municipal Code, Title I, Chapter XXIII, Relating to the Approval of Sanctioned Recreation Groups, Section IV, Eligibility Criteria  
**Presented by Kevin Smith and Art Psaledas**

**F. APPROVAL OF MINUTES**

Approval of April 2<sup>nd</sup>, 2018 Town Council Minutes

**G. OTHER BUSINESS**

1. Liaison Reports
2. Town Manager Report
3. Assistant Town Manager Report
4. Board/Committee Appointments/Reappointment

**H. ADJOURNMENT**

**I. MEETING SCHEDULE**

1. Town Council Meeting – 05/07/18 Moose Hill Council Chambers, 7:00PM
2. Town Council Meeting – 05/21/18 Moose Hill Council Chambers, 7:00PM
3. Town Council Meeting – 06/04/18 Moose Hill Council Chambers, 7:00PM
4. Town Council Meeting – 06/18/18 Moose Hill Council Chambers, 7:00PM

**ORDINANCE #2018-01**  
*AN AMENDMENT TO THE MUNICIPAL CODE*  
*TITLE III, LAND USE CODES, CHAPTER IV,*  
*CONSERVATION AREAS, RELATING TO*  
*KENDALL POND PARKING LOT HOURS*

*WHEREAS* the Town of Londonderry desires to impose certain hours of operation for the parking lot servicing the walking trails of the Kendall Pond (Laycock) Conservation Area (“KPCA”) as that area is defined in the Municipal Code, Title III, Chapter IV, Section II(C) (“Kendall Pond Parking Lot”), and to prescribe penalties for violations of same; and

*WHEREAS* the Town of Londonderry desires to correct a typographical error in the definition of KPCA in Title III, Chapter IV, Section II(C).

*NOW THEREFORE BE IT ORDAINED* by the Town Council of the Town of Londonderry that the Town Municipal Code be amended as follows:

1) Title III, Chapter IV, Section II(c) is hereby amended to read, “‘Kendall Pond (Laycock) Conservation Area’ shall mean and include Londonderry Tax Map 4, Lot 56, and other lots or areas annexed thereto as purchased or gifted to the Town.”; and

2) New paragraphs “J” and “K” are hereby added to Title III, Chapter IV, Section III “Regulated Activities” as follows:

J. “No vehicle shall enter or remain in the Kendall Pond Parking Lot outside of the following hours of operation:

During daylight savings time: 5:00 AM to 8:00 PM  
During standard time: 5:00 AM to 6:00 PM”

K. “Violations of Title III, Chapter IV, Section III(J) shall be punishable under Title III, Chapter IV, Section V, and the provisions of RSA 231:132-a shall apply thereto.

\_\_\_\_\_  
John Farrell - Chairman  
Town Council

\_\_\_\_\_  
Sharon Farrell - Town Clerk

(TOWN SEAL)

A TRUE COPY ATTEST:

Date: \_\_\_\_\_

**Chapter IV - Conservation Areas**

**SECTION I                    PURPOSE AND INTENT**

- A.     This ordinance applies to the Town of Londonderry’s major conservation areas and all recreational facilities
- B.     To encourage the physically handicapped through the use of off highway recreational vehicles to use and enjoy the conservation set aside.
- C.     To protect the users of these areas from physical injury that might result from the unrestricted operation of wheeled motor driven vehicles at these facilities
- D.     To limit the Town’s potential financial liability for any injuries that might result from the unrestricted operation of wheeled motor driven vehicles.
- E.     To prevent damage to the playing fields, trails, roads, parking areas, steep slopes, wetlands, campsites, activity areas and other improvements, and thereby reduce the cost to the taxpayers of Londonderry for operating and maintaining these facilities.
- F.     To prevent soil erosion, damage to vegetation and turf, and other injury to the environment.
- G.     To reduce the risk of fire
- H.     To reduce the amount of unwanted noise.
- I.     To encourage indigenous wildlife to inhabit Londonderry’s major conservation areas (TM. 1989 - Article 21)

**SECTION II                    DEFINITIONS (Rev. 5/20/02 - Ord. 2002-06)**

- A.     “Major Conservation Areas” is meant to include any lands acquired by the Conservation Commission pursuant to the provisions of RSA 36:A-4 or by any other means; including purchase, lease or easement.
- B.     “Musquash Conservation Area” shall mean and include Londonderry Tax Map 8, parcels 14 and 24, and others lots or areas annexed thereto as purchased or gifted to the Town.



**Chapter IV - Conservation Areas (Cont'd)**

**SECTION II DEFINITIONS (Cont'd)**

- C. “Kendall Pond (Laycock) Conservation Area” shall mean and include Londonderry Tax Map 5, Lot 56, and other lots or areas annexed thereto as purchased or gifted to the Town.
- D. “Wheeled Motor Driven Vehicle” shall mean any and all liquid petroleum, propane or electrically powered motor vehicles which travel on one or more wheels, including “trail bikes” as defined by RSA 215-A:1, XIV. Such vehicles shall *not* include:
  - 1. Common snowmobiles operated in accordance with the laws of the State of New Hampshire, provided they are propelled on snow by tracks or cleats and steered by skis;
  - 2. Wheeled devices operated by the handicapped;
  - 3. Lawnmowers, maintenance vehicles, construction and logging equipment operated by or on behalf of the Town of Londonderry;
  - 4. Any emergency vehicles operated by or under the direction of the Londonderry Police and/or Fire Departments.
- E. “Wetland Soils” are those soil types that have been classified as poorly drained or very poorly drained by the Soil Conservation Service or the U. S. Department of Agriculture.

**SECTION III REGULATED ACTIVITIES**

- A. No person under the age of sixteen years (16) shall, at any time, operate a wheeled motor driven vehicle within any of Londonderry’s major conservation areas or recreation facilities
- B. No person of any age shall operate a wheeled motor driven vehicle on any playing field, tennis court, activity area, basketball court, or grassed area of any portion of Londonderry’s major conservation areas or recreational facilities.
- C. No person of any age shall operate any wheeled motor driven vehicle within any portion of Londonderry’s major conservation areas or recreational facilities.

**Chapter IV - Conservation Areas (Cont'd)**

**SECTION III REGULATED ACTIVITIES (Cont'd)**

- D. No person of any age shall operate a wheeled motor driven vehicle on any portion of any of Londonderry's major conservation areas or recreational facilities which has wetland soils or an average slope in excess of six percent (6%), provided it be posted.
- E. No person of any age shall operate a wheeled motor driven vehicle in any manner that will cause physical damage to the surface or vegetation of any portion of Londonderry's major conservation areas or recreational facilities.
- F. No person of any age shall operate a wheeled motor driven vehicle at an unreasonable speed in any portion of Londonderry's major conservation areas or recreational facilities
- G. Paragraphs A through F may be waived by a majority vote of the Conservation Commission upon specific application.
- H. The above restrictions do not apply to handicapped individuals under RSA 261:88. However, the right to operate may be suspended or revoked at any time for irresponsible or reckless operation.
- I. All trails and foot paths shall be kept free of berms, barways, or barriers of any kind to prevent total access to all Conservation Lands, except where said barriers are authorized by the Conservation commission for road and trail improvements on a temporary basis, or on a permanent basis for protection of a fragile or abused area.

**SECTION IV ENFORCEMENT**

- A. The provisions of this Ordinance shall be enforceable by every Police and law enforcement officer, including, but not limited to, State Police officers, sheriffs, deputy sheriffs, fish and game officers, policemen, constables, and all persons empowered to make arrests in criminal cases. (TM 1989, Art. 21)

**Chapter IV - Conservation Areas (Cont'd)**

**SECTION V PENALTIES (Rev. Aug. 26, 2002)**

- A. Any person found guilty of violating any provision of this Ordinance shall be fined as follows:
  - 1. First Offense - \$100
  - 2. Second Offense - \$250
  - 3. Third Offense - \$750
  - 4. Fourth Offense \$1,000
- B. The net proceeds of all penalties collected pursuant to this Ordinance shall be paid into the General Fund of the town of Londonderry to help defray the costs of enforcing the ordinance.
- C. Any person who, while violating the provisions of this Ordinance, causes any damage to any of Londonderry's major conservation areas or any recreational facility, shall be ordered to repair all such damage or to reimburse the town of Londonderry for the repair of all such damage.
- D. If such person is a minor, then the parents or legal guardian of said minor shall also be liable to the Town for all such damage.

**SECTION VI EVIDENCE OF VIOLATION**

- A. Notwithstanding any other provision of law to the contrary, any wheeled motor driven vehicle used in violation of this Ordinance shall be deemed evidence of the violation and may be seized by a law enforcement officer and retained for up to twenty four (24) hours or until released to a parent, guardian or owner upon payment of the cost of such seizure and retention. (TM 1989, Art. 21)

**SECTION VII VALIDITY**

- A. If any section, clause, provision, portion or phrase of this Ordinance shall be held to be invalid or unconstitutional by any court of competent authority, such holding shall not affect, impair or invalidate any other section, clause or provision, portion or phrase of this Ordinance.
- B. The provisions of this Ordinance shall be valid and in full force and effect whether or not there is snow cover on the ground or whether or not any, all or none of the borders of Londonderry's major conservation areas or recreational areas are posted or identified by signs. (TM. 1989 Art. 21)

**Chapter IV - Conservation Areas (Cont'd)**

**SECTION VIII ACQUISITION OF LAND**

- A. The Town Council is authorized to accept private donations of land, interest in land, or money to be deposited into the Conservation Fund for the purpose of contributing to the local matching portion required for acquiring conservation land or interest in land or other costs associated therewith for permanent conservation use under the NH Land Conservation Investment Program (LCIP), RSA 221-A.
  
- B. The Town Council is authorized to apply for and accept the State matching funds under the LCIP for the purposes of acquisition of the fee or lesser interest in conservation land. Said appropriated or donated funds and State matching funds may be expended by majority vote of the Conservation Commission. (TM 1992 Art. 38)

*~~ End of Section ~~*

## MODEL RULES OF PROCEDURE FOR PUBLIC COMMENT

The following rules of procedure have been adopted by the Town Council of Londonderry to govern citizen input during public hearings and during “public comment” sessions and may be enforced at the discretion of the Chair:

- There shall be a TIME LIMIT for each individual speaker of 5 MINUTES.
- Speakers are not permitted to donate time to other speakers.
- During public hearings, speakers are required to limit their comments to the topic which is before the Council or Board and which is the subject of the hearing.
- During “public comment,” speakers are required to limit their comments to matters of public concern, relating to Town governance.
- Placement on Agenda: Individuals or groups wishing to speak at a regular Council or Board meeting at a time other than public hearing shall submit a written request to the Town Manager or Board Chair as well as the Administrative Assistant. The Chair of the Council or the Board retains the discretion to allow or deny permission on the agenda.
- The following conduct is prohibited:
  - ❖ Using profanity or vulgar language or gestures;
  - ❖ Using language which is likely to lead to a disturbance or disorder, because it insults or demeans any person or which, when directed at a public official or employee is not related to his/her official duties; however, citizens have the right to comment on the performance, conduct and qualifications of public figures;
  - ❖ Interrupting other speakers or engaging in behavior that disrupts the meeting including but not limited to applause, cheers, jeers, etc.;
  - ❖ Engaging in behavior that threatens or intimidates others; or
  - ❖ Addressing the Council or Board on issues that do not concern the services, policies or affairs of the Town.

**Land Lease Option Agreement  
(Solar Farm)**

**BETWEEN:**

**TOWN OF LONDONDERRY, LANDLORD**

**AND**

**SUPERFUND SOLAR LLC (or Assigns), TENANT**

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**EXHIBITS:**

Exhibit A-1	Legal Description of the Landlord Property
Exhibit A-2	Legal Description of the Leased Premises
Exhibit B-1	Tenant's Survey of the Leased Premises
Exhibit B-2	GMZ Site Plan
Exhibit C	Landlord Acknowledgement of Collateral Assignment of Lease
Exhibit D	Landlord Environmental Disclosures



**LAND LEASE OPTION AND LEASE AGREEMENT  
(SOLAR FARM)**

This Land Lease Option and Lease Agreement (the “Agreement”) is made this \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between the **TOWN OF LONDONDERRY**, having an address of 268B Mammoth Road, Londonderry, NH 03053 (“Landlord”), and **SUPERFUND SOLAR LLC**, a Delaware limited liability company (or assigns), having an office at 848 Elm Street, Manchester, NH 03101, Attn: Chris Stewart (“Tenant”).

**1. The Option.**

- a. For the sum of \$2,500.00 (the “Option Fee”) to be paid to Landlord by Tenant upon execution of this Agreement and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency thereof is hereby acknowledged, Landlord hereby grants to Tenant the exclusive and irrevocable right and option to lease the Leased Premises (as defined below) on the terms and conditions set forth below (the “Option”).

The term of the Option shall commence on the Effective Date and shall continue in full force and effect until \_\_\_\_\_, 2021 (as it may be extended, as described below, the “Option Period”). Tenant shall have the option and right to elect to extend the Option Period by one (1) additional year by providing Landlord with prior written notice of its election to exercise such option in advance of the expiration of the original three (3) year Option Period. If Tenant desires to exercise the Option, it shall do so by written notice thereof to Landlord within the Option Period (the “Option Notice”), time being of the essence with respect to the giving of the Option Notice. In the event that Tenant fails to deliver the Option Notice to Landlord during the Option Period in accordance with the terms hereof, the Option set forth herein shall terminate and be of no further force or effect and Tenant shall have no further right to lease the Leased Premises.

- b. During the Option Period, Landlord shall permit Tenant and its authorized agents and representatives to enter upon the Landlord Property (as defined below) at reasonable times during normal business hours to inspect the Landlord Property and to perform surveys and any other customary studies and tests Tenant may require in connection with determining whether the Landlord Property is suitable for the construction of the Solar Farm (defined below). Tenant shall bear the cost of all inspections.
- c. Upon Tenant’s exercise of the Option, the terms of this Agreement relating to the lease of the Leased Premises (the “Lease”) that follows shall take effect. The date that the Option Notice is delivered shall be considered the “Lease Commencement Date”.

- d. In the event Landlord fails to perform its obligations under this Agreement for any reason other than Tenant's breach, Tenant may pursue all remedies available at law and in equity. Landlord hereby acknowledges that Tenant will incur significant expenses in reliance on this Agreement.

**2. Leased Premises.**

- a. Upon Tenant's exercise of the Option, Landlord shall lease to Tenant and Tenant shall lease from Landlord, pursuant to the terms of this Agreement, an approximately two hundred (200) acre parcel of real property, located at 58 Old Derry Road (Parcel ID 0160230) in Londonderry, Rockingham County, New Hampshire, which property is more particularly described in Exhibit A-1 attached hereto ("Landlord Property"), together with ingress, egress, and utility easements providing access to and from a public road and the point of utility interconnection, as described in Sections 5 and 6 below (collectively, the "Leased Premises"). A legal description of the Leased Premises is attached hereto and incorporated herein as Exhibit A-2.
- b. Prior to the Lease Commencement Date, Tenant shall obtain a survey of the Leased Premises (the "Survey"). The parties agree that (i) the legal description of the Leased Premises contained on the Survey shall be incorporated into Exhibit A-2 as if fully set forth therein without amendment to the Lease, and that for purposes of determining the amount of rent payable hereunder, the size of the Leased Premises as shown on the Survey shall be binding on the parties hereto, and (ii) the Survey shall be incorporated into Exhibit B-1 as if fully set forth therein without amendment to the Lease.
- c. The parties acknowledge and recognize that a portion of the Leased Premises shall be located within the Ground Water Management Zone ("GMZ Zone") depicted as "GMZ Boundary" on that certain Site Plan attached hereto as Exhibit B-2 (the "GMZ Site Plan"). That portion of the Leased Premises located outside the GMZ Zone as of the date of this Agreement shall be referred to herein as the "Non-GMZ Leased Premises" and that portion of the Leased Premises located within the GMZ Zone as of the date of this Agreement shall be referred to herein as the "GMZ Leased Premises".

**3. The Consent Decree.**

- a. Tenant acknowledges and recognizes that the Leased Premises is subject to a 1999 Consent Decree entered in the U.S. District Court, District of New Hampshire, Docket Nos. C-92-486 and C-94-148-L (the "Consent Decree"), a copy of which was provided to Tenant by Landlord.
- b. Tenant understands and agrees that all rights set forth in this Agreement are subject to the terms of the Consent Decree, and to the extent the rights

granted in this Agreement are inconsistent with the terms of the Consent Decree, the Consent Decree will control.

**4. Term.** The lease term (collectively, the “Term”) shall be as follows:

- a. The Primary Term shall commence on the Lease Commencement Date and expire on the date that is twenty-five (25) years after the Commercial Operations Date. The “Commercial Operations Date” shall mean the date on which the Solar Farm is (i) mechanically complete, tested, commissioned and authorized to generate electricity under local and state laws and regulations, and (ii) electrical output is being generated by the Solar Farm and delivered to the grid or a utility provider.
- b. Tenant shall have the option and right to elect to extend the Lease for up to three (3) five (5) year extensions (each such extension referred to as a “Renewal Term”, or collectively as the “Renewal Terms”). Tenant shall give Landlord three hundred sixty-five (365) days’ prior written notice of its election to extend the Lease for each of the three (3) Renewal Terms.
- c. A final term commencing upon expiration of the Primary Term, or expiration of the last Renewal Term, whichever is later, to allow for Tenant’s decommissioning and removal of the Solar Farm (as defined below) (the “Final Term”). The Final Term shall last no longer than twelve (12) months, unless extended per mutual written agreement of Tenant and Landlord.

**5. Rent.** In consideration for Landlord leasing the Leased Premises to Tenant, Tenant agrees to pay during the Term to Landlord in lawful money of the United States of America, basic rent as follows (collectively, the “Basic Rent”):

a. Non-GMZ Leased Premises Rent:

i. Primary Term Rent.

Commencing on the Commercial Operations Date and continuing on each anniversary thereafter, for the first five (5) years following the Commercial Operations Date, the annual rent of \$1,000.00 per acre of the Non-GMZ Leased Premises, payable to Landlord, in advance, in quarterly installments.

Commencing on the sixth (6<sup>th</sup>) anniversary of the Commercial Operations Date and continuing on each anniversary thereafter, for the next five (5) years, the annual rent of \$1,100.00 per acre of the Non-GMZ Leased Premises, payable to Landlord, in advance, in quarterly installments.

Commencing on the eleventh (11<sup>th</sup>) anniversary of the Commercial Operations Date and continuing on each anniversary thereafter, for the next ten (10) years, the annual rent of \$1,200.00 per acre of the Non-GMZ Leased Premises, payable to Landlord, in advance, in quarterly installments.

Commencing on the twenty-first (21<sup>st</sup>) anniversary of the Commercial Operations Date and continuing on each anniversary thereafter, until the expiration of the Primary Term, the annual rent of \$1,300.00 per acre of the Non-GMZ Leased Premises, payable to Landlord, in advance, in quarterly installments.

- ii. Renewal Term Rent. Beginning on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) Renewal Term and any subsequent Renewal Term, the annual Rent of \$1,4000.00 per acre of the Non-GMZ Leased Premises, payable to Landlord, in advance, in quarterly installments.
- iii. Final Term Rent. Commencing on the first day of the Final Term and expiring on the last day of the Final Term, rent in the amount equal to the then applicable Rent, in connection with the Non-GMZ Leased Premises, divided by twelve (12), payable monthly to Landlord, in arrears, with the last monthly installment thereof pro-rated to the last day of the Final Term.

b. GMZ Leased Premises Rent.

- i. Primary Term Rent. Commencing on the Commercial Operations Date and continuing on each anniversary thereafter, until the expiration of the Primary Term, the annual rent of \$200.00 per acre of the GMZ Leased Premises, payable to Landlord, in advance, in quarterly installments.
- ii. Renewal Term Rent. Beginning on the first (1<sup>st</sup>) day of the first (1<sup>st</sup>) Renewal Term and any subsequent Renewal Term, the annual Rent of \$200.00 per acre of the GMZ Leased Premises, payable to Landlord, in advance, in quarterly installments.
- iii. Final Term Rent. Commencing on the first day of the Final Term and expiring on the last day of the Final Term, rent in the amount equal to the then applicable Rent, in connection with the GMZ Leased Premises, divided by twelve (12),

payable monthly to Landlord, in arrears, with the last monthly installment thereof pro-rated to the last day of the Final Term.

- c. Contingent GMZ Leased Premises Rent. Notwithstanding any term to the contrary contained herein, in the event Tenant, at Tenant's sole option, and subject to Section 3 of this Agreement, at any point during the Term (i) expands the Solar Farm (as defined below), or (ii) constructs any other solar generation or storage related improvements (collectively, the "Contingent Improvements") on any portion of the GMZ Leased Premises (the "Contingent Improvements Area"), upon the Commercial Operations Date of such Contingent Improvements, as applicable, the Basic Rent, in connection with the Contingent Improvements Area only, shall automatically increase in accordance with and subject to the Non-GMZ Leased Premises Rent obligations set forth in Section 5(a) above. That portion of the GMZ Leased Premises which is not also part of the Contingent Improvements Area shall remain subject to the GMZ Leased Premises Rent obligations set forth in Section 5(b) above.
- d. Any payment due under this Lease shall be timely if it is made on the due date or within thirty (30) calendar days thereof.

**6. Improvements of Leased Premises.**

- a. Components. Tenant shall construct an approximately ten (10) megawatt AC solar farm (the "Solar Farm"), at its sole expense, on the Leased Premises. The Solar Farm shall consist of racking and foundations; inverters and transformers; necessary battery storage material; necessary electrical interconnections and all improvements and connections required to transfer and deliver generation offsite, including three (3) phase extensions and power box(es); a 200 to 400 square-foot structure to house electrical and maintenance equipment ("PV Box"); security fencing and gating enclosing the Leased Premises; safety signage and solar photo voltaic ("PV") panels (collectively, the "Site Improvements and Infrastructure").
- b. Preliminary Site Plan, Construction Plans. For any new construction on the Leased Premises, such construction shall be designed and built to the minimum standards for any county, state and federal codes and requirements in effect at the time of construction, including without limitation, the applicable building and fire codes.
- c. Signage. Tenant shall have the right to place one or more signs advertising the Solar Farm provided that, prior to putting up any such signage, Tenant has obtained all required sign permits from the local governing authority,
- d. Fencing. Tenant shall maintain a fence around the Solar Farm for the duration of the Term and any extensions thereto.

- e. Interconnection. Tenant shall be responsible for all costs required to obtain the right to interconnect with the utility and any costs required to obtain site control from third parties for the interconnection route from the Solar Farm any points of utility interconnection.
  
- f. Alterations; Tenant's Property. Except for improvements related to the remediation or other actions required under the Consent Decree, Tenant may, at its expense, demolish any existing improvements on the Leased Premises, and make any alterations, additions, improvements and changes to the Leased Premises that it deems reasonably necessary in the operation of its business without the consent of Landlord, including without limitation installation of fencing, security devices and/or signage; provided that such alterations, additions, improvements or changes are made in compliance with the terms of this Lease and with applicable laws, including but not limited to the Consent Decree (as defined below). Landlord agrees to sign any permit applications and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Leased Premises. Any and all improvements constructed on the Leased Premises by or for Tenant, and all machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed in the Leased Premises by or for Tenant, including but not limited to the Site Improvements and Infrastructure (collectively, "Tenant's Property"), shall, regardless of the manner of attachment to the Leased Premises or the improvements thereon, be and at all times remain the property of Tenant. Landlord acknowledges and agrees that despite that portions of the Tenant's Property may be affixed to the Landlord Property, (i) Tenant, its affiliate or equipment lessor is the exclusive owner of the Tenant's Property, (ii) Tenant's Property shall not be construed to be a fixture and shall be deemed to be personal property within the meaning of Article 9 of the Uniform Commercial Code of the State of New Hampshire regardless of the manner of attachment to the Leased Property and/or to Landlord Property, (iii) Tenant or its affiliate or transferee is the exclusive owner of the electricity generated by the Tenant's Property and the environmental attributes and environmental incentives of the Tenant's Property. Landlord has no right, title or interest in the Tenant's Property, the environmental attributes and the environmental incentives of the Tenant's Property and has waived any and all rights it may have to a lien on the Tenant's Property, the environmental attributes and the environmental incentives of the Tenant's Property and all rights of distraint and seizure for rent and all other lien rights, claims and demands of every kind against the Tenant's Property, the environmental attributes and the environmental incentives of the Tenant's Property.

7. **Access and Institutional Controls**.

- a. Tenant will take all steps necessary to ensure that the requirements for access and institutional controls described in Section IX of the Consent



Decree are followed at all times. Such access and institutional controls include, but are not limited to the following:

- i. Provide the United States, the State of New Hampshire, and their representatives, including EPA and its contractors, and the Performing Parties (as that term is defined in the Consent Decree) with access at all reasonable times to the Leased Premises; and
- ii. Tenant shall refrain from using the Leased Premises, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures implemented pursuant to the Consent Decree.

**8. Ingress, Egress, Utility and Solar Easement.** The rights granted to Tenant in this Lease include, without limitation the following easements and related rights:

- a. the exclusive right to erect, construct, reconstruct, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Leased Premises, in connection with Solar Farm: (a) a line or lines of towers, with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables (collectively “Transmission Facilities”); (b) facilities consisting of one or more substations for electrical collection, to step up the voltage, interconnect to transmission line or lines, and meter electricity, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service Solar Farm, regardless where located (collectively “Interconnection Facilities”, which collectively with the Transmission Facilities and improvements installed in connection with the Solar Farm, collectively constitute the “Solar Improvements”); and (c) with all necessary easements therefor;
- b. an easement and right over and across the Landlord Property for any audio, visual, view, light, shadow, noise, vibration, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Solar Farm, including but not limited to rights to cast shadows and reflect glare onto all of the Landlord Property including any adjoining property, from the Solar Farm and/or any and all other related facilities, wherever located; an exclusive easement and right to capture, use and convert sunlight and related solar resources on an unobstructed basis over and across the Landlord Property; any obstruction to the receipt of and access to sunlight throughout the entire area of the Leased Premises is prohibited;

- c. an access easement over and across the Landlord Property for ingress and egress to the Leased Premises, to and from a public road, and a construction and utility easement over Landlord Property adjacent to the Leased Premises for construction and maintenance of the Solar Improvements.
- d. an non-exclusive right for the installation, use, repair, replacement and removal of Transmission Facilities across the Landlord Property;
- e. an non-exclusive right for the installation, use, operation, maintenance, repair, replacement and removal of Interconnection Facilities across the Landlord Property;
- f. an easement and right on the Landlord Property to prevent measurable diminishment in output due to obstruction of the sunlight across the Leased Premises including but not limited to an easement right to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Landlord Property which might obstruct receipt of or access to sunlight throughout the Leased Premises or interfere with or endanger the Solar Farm or Tenant's operations;
- g. the right of subjacent and lateral support on the Landlord Property to whatever is necessary for the operation and maintenance of the Solar Farm, including, without limitation, guy wires and supports; and
- h. the right to undertake any such purposes or other activities, whether accomplished by Tenant or a third party authorized by Tenant, that Tenant determines are necessary, useful or appropriate to accomplish any of the purposes or uses set forth in this Agreement or that are compatible with such purposes or uses.

The easement rights granted by Landlord under this Agreement constitute **EASEMENTS IN GROSS**, personal to and for the benefit of Tenant, its successors and assigns, as owner of such easements, and the parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. The parties expressly intend for all easement rights herein to be, and for this Agreement to create, **EASEMENTS IN GROSS** in Tenant, and neither such easements nor this Agreement shall be appurtenant to any other property or interest. Notwithstanding the foregoing, if the Landlord conveys the Landlord Property during the Term, Landlord agrees that any granting document, including the deed, shall include within the property description, the existence of the easements contained herein.

The term of the easements described in this Section 6 shall commence upon the Lease Commencement Date and shall continue until the last to occur of (i) expiration of the Term, or (ii) removal by Tenant of all of its property from the Leased Premises after expiration of the Term. Additional details concerning the location and configuration of the easement shall be set forth in a recordable instrument prepared by Tenant, which Landlord agrees to execute, and have notarized, within ten (10) days of any Tenant request therefor made from time to time. In addition, at Tenant's



request and expense, the easements described in this Section 6 may be set forth in a separate standalone easement agreement, which Landlord and Tenant agree to execute and which Tenant shall have recorded as an encumbrance on the property of Landlord and binding upon all subsequent owners, successors, and assigns.

**9. Maintenance and Security.**

- a. Maintenance. The Solar Farm shall be maintained by Tenant at its own expense. Tenant shall maintain, protect and preserve the Solar Farm in a safe, neat and attractive condition and in good and serviceable repair. Tenant shall be responsible for ongoing vegetation and weed management on the Leased Premises.
- b. Snow Removal. Landlord does not provide snow removal service on the access road serving the Leased Premises. Snow removal on the Leased Premises, if needed, shall be the responsibility of Tenant as necessitated by Tenant's operation of the Solar Farm. Any snow removal activities will minimize any damage to the existing ground surface of the site. Tenant will promptly repair any damage caused by its snow removal activities.
- c. Security. Security for the Solar Farm shall be the responsibility of Tenant. Nothing in this Agreement shall be construed to impose security obligations upon Landlord, Landlord shall not be liable for any loss or damages suffered by Tenant or third party solar panel owners due to Tenant's and such third parties use and occupancy of and activities on the Leased Premises.

**10. Quiet Possession.** Tenant shall have the quiet use and enjoyment of the Leased Premises and the easements described herein in accordance with and subject to the terms of this Agreement, without any manner of hindrance, interference, or molestation of any kind by Landlord or any person claiming through Landlord.

**11. Landlord's Warranties and Representations.** Landlord hereby agrees with, and warrants and represents to Tenant as follows: (i) Landlord owns the Leased Premises and the Landlord Property in fee simple, free and clear of all liens, encumbrances, and restrictions of every kind and nature, except for those that currently appear in the recorded chain of title and are reported as exceptions on the commitment for title insurance that Tenant may obtain; (ii) Landlord has full right and authority to execute this Agreement and to lease the Leased Premises to Tenant in accordance with the terms hereof without the consent or joinder of any other party; (iii) to the Landlord's best knowledge the Leased Premises comply with any and all applicable laws, rules, regulations and recorded documents and there is no pending or threatened condemnation proceeding, zoning change or legal noncompliance related to the Leased Premises; (iv) Landlord will not institute or consent to any rezoning of the Leased Premises during the Term without the prior written consent of Tenant; (v) Landlord shall not further encumber the title to the Leased Premises during the Term; (vi) Except as may be required under the terms of the Consent Decree, Landlord shall not cause or permit any property owned or controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's use of the Leased Premises (for example, and without limiting the generality of the foregoing, Landlord shall not

cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon that may obstruct the sunlight that otherwise would reach the Leased Premises, or that may cast shade or shadows upon the Leased Premises or any portion thereof); (vii) there are no service or maintenance contracts affecting the Leased Premises; (viii) there are no delinquent or outstanding assessments, liens or other impositions levied or assessed against the Leased Premises or the larger property of which the Leased Premises are a part; (ix) except for this Agreement, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Leased Premises, whether written or oral, recorded or unrecorded; (x) Landlord is not in the hands of a receiver nor is an application for such a receiver pending; (xi) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and (xii) within five (5) days after the full execution of this Agreement, Landlord shall provide copies of the following to Tenant (if any): any notices of any statute or code violation pertaining to the Leased Premises; all environmental assessment reports for the Leased Premises in Landlord's possession or control upon request for specific documents by Tenant; Landlord's most recent survey and title insurance policy relating to the Leased Premises; any governmental permits for the Leased Premises and any other documentation in Landlord's possession relating to the Leased Premises.

**12. Title to Site Improvements and Infrastructure.**

- a. Site Improvements and Infrastructure. Title to the Site Improvements and Infrastructure remains with Tenant at all times during the Term. Upon expiration of this Agreement, title to the Site Improvements and Infrastructure shall be designated in accordance with Section 25 below.
- b. Repair of Landlord Property. In the event that Tenant causes any damage to the Landlord Property in the course of any activity undertaken by Tenant under this Agreement, Tenant shall facilitate the repair of such damage to return such property of Landlord to substantially the same condition as it existed prior to such damage, at Tenant's sole expense.

**13. Uses and Operations.**

- a. Authorized Uses and Operations. Tenant shall construct, operate and maintain the Solar Farm as a renewable energy generation system.
- b. Unauthorized Uses and Operations. The Tenant's uses under this Lease include the construction, maintenance, operation, use, repair, replacement and removal of the Solar Farm, and activities related thereto. Nothing in this Agreement shall be deemed to give Tenant the right to engage in any activities which are not related to the foregoing uses, except as otherwise allowed under the provisions of this Lease.

**14. Subordination, Attornment, and Nondisturbance.** Tenant agrees that, if requested by Landlord, this Agreement shall be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Leased Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust, provided

that Landlord first delivers to Tenant a Subordination and Non-Disturbance Agreement (defined below) from the holder of such lien or mortgage, and Landlord shall obtain the same from the holder of such lien or mortgage. Except as may be required under the Consent Decree, Landlord agrees that any right, title or interest created by Landlord from and after the date hereof in favor of or granted to any third party shall be subject to (i) this Agreement and all of Tenant's rights, title and interests created in this Agreement, and (ii) any and all documents executed or to be executed by and between Tenant and Landlord in connection with this Agreement. A "Subordination and Non-Disturbance Agreement" shall mean an agreement, in form reasonably acceptable to Tenant, between Tenant, Landlord and the holder of a lien or a mortgage that provides that the holder of such lien or a mortgage (i) agrees not to disturb Tenant's possession or rights under this Agreement, (ii) agrees to provide notice of defaults under the lien or a mortgage documents to Tenant and agrees to allow Tenant and its lenders a reasonable period of time following such notice to cure such defaults on behalf of Landlord, and (iii) agrees to comply with such other requirements as may be reasonably required by Tenant or its lenders to ensure the interests of Tenant or its lenders are not interfered with. Within ten (10) business days of delivery of Tenant's Option Notice, and within ten (10) business days of the date of creation of any future mortgages or deeds of trust Landlord shall obtain from any holder of a mortgage or other lien on the Leased Premises securing debt owed by Landlord a Subordination and Non-Disturbance Agreement in form reasonably acceptable to Tenant, executed and acknowledged by Landlord and the holder of the mortgage or other lien.

**15. Mortgagee Protection.** Any Mortgagee of the Leased Premises, or any portion of Leased Premises, shall, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the following protections, upon delivery to Landlord of notice of its name and address:

- a. Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Leased Premises or any portion thereof and to perform all obligations to be performed by Tenant under this Agreement, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Landlord's consent shall not be required for (a) the pledge, assignment, mortgage or hypothecation of Tenant's rights in the Agreement, the Site Improvements and Infrastructure, or Tenant, or (b) the acquisition of Tenant's leasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. In connection with any such pledge, assignment, mortgage or hypothecation by Tenant, Landlord shall acknowledge and execute a Landlord Acknowledgement of Collateral Assignment of Lease in the form attached hereto as Exhibit C, or in another commercially reasonable form as required by the party receiving such assignment. As used in this Agreement, (i) the term "Mortgagee" means any financial institution or other person or entity that from time to time provides secured financing for or otherwise encumbers some or all of Tenant's interest in the Agreement or Solar Farm, collectively with any

security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors and assigns, (ii) the term “Mortgage” refers to the mortgage, deed of trust or other security interest in this Agreement and/or the Solar Farm and Solar Improvements given to a Mortgagee in connection with such financing and (iii) the term “Mortgaged Interest” refers to the interest in this Agreement and/or the Solar Farm and Solar Improvements, that is held by the Mortgagee.

- b. Notice of Default: Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Tenant, Landlord shall give written notice of the default to each Mortgagee concurrently with delivery of such notice to Tenant, as applicable, specifying in detail the alleged event of default; provided however that such Mortgagee shall have provided Landlord with its current address. In the event the Landlord gives such a written notice of default, the following provisions shall apply:
- i. A “Monetary Default” means failure to pay when due any rent or other monetary obligation of Tenant to Landlord under this Agreement; any other event of default is a “Non-Monetary Default.”
  - ii. The Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Tenant, plus, in each instance, the following additional time periods: (i) sixty (60) days after receipt of the notice of default in the event of any Monetary Default; and (ii) ninety (90) days after receipt of the notice of default in the event of any non-monetary default, provided that such period shall be extended for the time reasonably required to complete such cure, including the time required for the Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Leased Premises (including possession by a receiver) or by instituting foreclosure proceedings, provided the Mortgagee acts with reasonable and continuous diligence. The Mortgagee shall have the absolute right to substitute itself for Tenant and perform the duties of Tenant under this Agreement for purposes of curing such defaults. Landlord expressly consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Leased Premises to complete such performance with all the rights, privileges and obligations of the Tenant. Landlord shall not terminate this Agreement prior to expiration of the cure periods available to a Mortgagee as set forth herein.
  - iii. During any period of possession of the Mortgaged Interest by a Mortgagee (or a receiver requested by such Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a

Mortgagee, the Mortgagee shall pay or cause to be paid the rent and all other monetary charges payable by Tenant under this Agreement which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Tenant's Mortgaged Interest by the Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to the Mortgaged Interest shall, as promptly as reasonably possible, commence the cure of all defaults under this Agreement and thereafter diligently process such cure to completion, whereupon Landlord's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Mortgagee or party acquiring title to the Mortgaged Interest shall not be required to cure those non-monetary defaults which are not capable of being cured or performed by such party ("non-curable defaults"). Non-curable defaults shall be deemed waived by Landlord upon completion of foreclosure proceedings or acquisition of interest in this Agreement by such party.

- iv. Any Mortgagee or other party who acquires the Mortgaged Interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Tenant by this Agreement incurred or accruing after such party no longer has ownership of the leasehold estate or possession of the Leased Premises.
  - v. Neither the bankruptcy nor the insolvency of Tenant or any Assignee shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by Tenant under this Agreement are paid by the Mortgagee in accordance with the terms of this Agreement.
  - vi. Nothing in this Agreement shall be construed to extend this Agreement beyond the Term or to require a Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Mortgagee discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.
- c. New Agreement to Mortgagee. If this Agreement terminates because of Tenant's default or if the Mortgaged Interest is foreclosed, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, then Landlord shall, upon written request from any Mortgagee, enter into a new lease of the Leased Premises, on the following terms and conditions:



- i. The terms of the new agreement shall commence on the date of termination, foreclosure, or rejection and shall continue for the remainder of the Term of this Agreement, at the same rent and subject to the same terms and conditions set forth in this Agreement. Such new agreement shall be subject to all existing subleases, provided the subtenants are not then in default.
  - ii. The new agreement shall be executed within thirty (30) days after receipt by Landlord of written notice of the Mortgagee's election to enter a new agreement, provided said Mortgagee: (i) pays to Landlord all rent and other monetary charges payable by Tenant, as applicable, under the terms of this Agreement up to the date of execution of the new agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed, less the rent and other income actually collected by Landlord from subtenants or other occupants of the Leased Premises; and (ii) perform all other obligations of Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (iii) agrees in writing to timely perform, or cause to be performed, all non-monetary obligations which have not been performed by Tenant and would have accrued under this Agreement up to the date of commencement of the new agreement, except those obligations which constitute non-curable defaults as defined above; (iv) reimburses Landlord for Landlord's reasonable attorney fees incurred in reviewing the same. Any new agreement granted the Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landlord.
  - iii. At the option of the Mortgagee, the new agreement may be executed by a designee of such Mortgagee without the Mortgagee assuming the burdens and obligations of the Tenant thereunder.
  - iv. If more than one Mortgagee makes a written request for a new agreement pursuant hereto, the new agreement shall be delivered to the Mortgagee requesting such new lease whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect. Landlord shall be reimbursed all reasonable expenses incurred in determining whose Mortgage is prior in lien.
- d. Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the parties agree that so long as there exists an unpaid Mortgage, this Agreement shall not be modified or amended and Landlord shall not accept a surrender of the Leased Premises or any part thereof or a cancellation or release of this Agreement from Tenant prior to expiration of the Term without the prior

written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee.

- e. No Waiver. No payment made to Landlord by a Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and a Mortgagee having made any payment to Landlord pursuant to Landlord's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.
- f. No Merger. There shall be no merger of this Agreement, or of the leasehold estate created by this Agreement, with the fee estate in the Leased Premises by reason of the fact that this Agreement or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Leased Premises and all persons (including Mortgagee) having an interest in this Agreement or in the estate of Landlord shall join in a written instrument effecting such merger and shall duly record the same.
- g. Third Party Beneficiary. Each Mortgagee is and shall be an express third party beneficiary of the provisions of this Section, and shall be entitled to compel the performance of the obligations of Landlord under this Agreement.
- h. Further Amendments. Provided that no material default in the performance of Tenant's obligations under this Agreement shall have occurred and remain uncured after the expiration of all applicable notice and cure periods, at Tenant's request, Landlord shall (a) amend this Agreement to include any provision that may reasonably be requested by an existing or proposed Mortgagee, or by any entity that is proposing to directly or indirectly acquire any Project, and (b) shall execute such additional documents as may reasonably be required to evidence such Mortgagee's or other entity's rights hereunder; provided, however, that such amendment shall not materially impair the rights of Landlord under this Agreement, or extend the Term of this Agreement. Further, Landlord shall, within ten (10) days after written notice from Tenant or any existing or proposed Mortgagee, execute and deliver thereto a certificate to the effect that Landlord (a) recognizes a particular entity as a Mortgagee under this Agreement and (b) will accord to such entity all the rights and privileges of a Mortgagee hereunder.
- i. Further Amendments to Leased Premises Description. In the event that it is determined by Tenant or any Mortgagee that there are any inaccuracies in or changes required to the legal description of the Leased Premises contained in Exhibit A-2, the validity of this Agreement shall not be affected, and, upon the request of Tenant made from time to time, Landlord shall execute an amendment to the legal description of the Leased Premises

contained in Exhibit A-2 of this Agreement and in any memorandum of this Agreement to reflect the legal description of the Leased Premises as contained in any survey obtained by Tenant for the Leased Premises.

**16. Consent Decree; Governmental Approvals and Compliance.**

- a. Landlord and Tenant acknowledge that the Leased Premises is subject to the Consent Decree governing remediation of a contaminated site and that development of the Solar Farm must conform to the requirements of the Consent Decree and any other documents and agreement related thereto, including but not limited to, notice requirements to the State of New Hampshire (the "State") and to the United States Environmental Protection Agency ("EPA"), certain possible prior approvals from the EPA and/or the State, and certain possible consultations with the EPA and/or the State regarding any work to be conducted on the Leased Premises (collectively, the "Consent Decree Requirements"). Landlord represents and warrants that Landlord has delivered all required notices and sought and obtained any and all necessary approvals pursuant to the Consent Decree in connection with execution of this Agreement. Landlord further represents and warrants that, as of the Effective Date, Landlord and the Landlord Property are in full compliance with the requirements of the Consent Decree.
- b. Tenant shall obtain any necessary governmental licenses or authorizations required for the construction and use of the Site Improvements and Infrastructure on the Leased Premises and shall comply with government laws and regulations applicable thereto. Notwithstanding the foregoing, Tenant shall not be responsible for any matters arising in connection to Environmental Laws relating to the Leased Premises, except to the extent that the Tenant causes a breach or violation of the Consent Decree or the need for compliance therefor arises directly out of the release by Tenant of any Hazardous Substances (as defined herein) on or about the Leased Premises.

**17. Assignment.** Excluding assignments that occur pursuant to Section 12 above, and subject to the terms of the Consent Decree, Tenant may not assign this Agreement or sublease the Leased Premises without Landlord's prior written consent, which consent shall not be unreasonably, conditioned, withheld, delayed or denied. Notwithstanding the foregoing, and except as it may be limited by the terms of the Consent Decree, Tenant is expressly permitted to assign its rights and responsibilities under this Agreement, without obtaining Landlord's prior written consent and in Tenant's sole discretion, to any entity: (a) owned or controlled by Tenant or under common ownership or control with Tenant, (b) which acquires the Tenant or to which Tenant conveys or assigns all of its right title and interest in the Solar Farm, (c) to any financing party providing funding to the Tenant for the purpose of developing the Solar Farm, or (d) to any Qualified Assignee (as defined herein). As used in this section, "Qualified Assignee" means a person that has (i) a minimum financial liquidity of \$500,000, and (ii) at least two (2) years of experience owning and managing solar assets of similar size to the Solar Farm, provided that, if



such person does not have such experience, such person may engage a qualified manager that has such experience to provide management services pursuant to a management services agreement.

**18. Notices.** All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying party, or officer, agent, or attorney of the notifying party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Landlord:           Town of Londonderry  
Kevin H. Smith, Town Manager  
268B Mammoth Road  
Londonderry, NH 03053

To Tenant:             Superfund Solar LLC  
848 Elm Street  
Manchester, NH 03101  
Attention: Chris Stewart  
Email: Chris@graniteapollo.com

With a copy to:       Nixon Peabody LLP  
900 Elm Street  
Manchester, NH 03101  
Attention: Philip B. Taub, Esq.  
Email: ptaub@nixonpeabody.com

The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

**19. Insurance.** At all times during the Term of this Lease, Tenant shall maintain in full force a comprehensive public liability insurance policy covering Tenant's operations, activities, and liabilities on the Leased Premises, having singly or in combination limits not less than Two Million Dollars (\$2,000,000) in the aggregate. Such policy shall name Landlord as an additional insured under such policy as the Landlord's interests may appear. Upon Landlord's request, Tenant shall give Landlord a certificate of insurance evidencing that the insurance required under the Agreement is in force.

**20. Operating Expenses.** Tenant shall fully and promptly pay for all water, gas, heat, light, power, telephone service, and other public utilities furnished to the Leased Premises and used by Tenant throughout the Term hereof, and for all other costs and expenses of every kind whatsoever in connection with the use, operation, and maintenance of the Leased Premises and all activities conducted thereon.

**21. Taxes.** During the Option Period Landlord and Tenant shall attempt in good faith to negotiate a PILOT agreement for the payment of all personal and real property taxes assessed on the Leased Premises during the Term on terms mutually acceptable to Landlord and Tenant.

Tenant shall make all payments due pursuant to any PILOT agreement in a timely manner. In the event Landlord and Tenant are unable to agree on a PILOT agreement, the Tenant shall timely pay the real and personal property taxes assessed on the Leased Premises and any taxable improvements to the Leased Premises as they become due. Tenant shall retain its statutory right to seek an abatement from such taxes, if it disputes the taxes assessed.

**22. Maintenance by Landlord.** Landlord shall maintain its property adjacent to the Leased Premises, if any, in good condition and state of repair to avoid interference with Tenant's use of the Leased Premises and the Easement. Landlord shall not construct structures or plant trees adjacent to the Leased Premises that will impede solar access to Solar Farm.

**23. Risk of Loss.** Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored, or maintained in or upon the Leased Premises by Tenant shall be so installed, kept, stored, or maintained at the risk of Tenant, Landlord shall not be responsible for any loss or damage to equipment owned by Tenant that might result from tornadoes, lightning, windstorms, or other Acts of God.

**24. Tenant's Performance and Surrender.** Tenant shall pay the rent and all other sums required to be paid by Tenant hereunder in the amounts, at the times, and in the manner herein provided, and shall keep and perform all terms and conditions hereof on its part to be kept and performed, and at the expiration or sooner termination of this Agreement, surrender to Landlord the Leased Premises subject to the other provisions of this Agreement.

**25. Default and Termination for Default.** Landlord or Tenant shall be in default of this Agreement if either party breaches any material provision hereof and said breach is not cured by the breaching party within sixty (60) days of receipt of notice of said breach from the non-breaching party, or if such cure cannot reasonably be had within said sixty (60) day period, then if cure of such breach is not commenced within thirty (30) days of receipt of such notice and not thereafter completed using diligent efforts. Upon the breaching party's failure to cure its breach within such time, as applicable, the non-breaching party shall have the right to terminate this Agreement for default, and to pursue such remedies as may be available in law or equity.

**26. Right to Terminate.** Tenant may terminate this Lease, at its option, after giving not less than thirty (30) days' notice to Landlord, if:

- a. Any governmental agency denies a request by Tenant for or revokes a permit, license, or approval that is required for Tenant to construct or operate the Site Improvements and Infrastructure on the Leased Premises;
- b. Tenant determines that technical problems, which problems cannot reasonably be corrected, preclude Tenant from using the Leased Premises for its intended purpose;
- c. Tenant determines that Tenant does not have acceptable and legally enforceable means of ingress and egress to and from the Leased Premises;
- d. Utilities necessary for Tenant's use of the Leased Premises are not available to the Leased Premises; or

- e. The Leased Premises are damaged or destroyed to an extent that prohibits or materially interferes with Tenant's use of the Leased Premises.

In the event of termination by Tenant pursuant to this provision, Tenant shall be relieved of all further liability hereunder except its obligation to remove its improvements as provided herein. Any rental fees paid prior to said termination date shall be retained by Landlord.

**27. Rights to Site Improvements and Infrastructure Upon Termination.**

- a. Title: Tenant. At least ninety (90) days prior to the expiration of the Term (including the expiration of any extension to such Term under Section 3), Tenant shall advise Landlord in writing of Tenant's intention regarding Tenant's ownership of the Solar Farm upon expiration, based upon one of the options set forth in this Section 25(a):

- i. Retain Title and Operating Rights. Retain ownership of the Solar Farm and continue to operate the Leased Premises as a community-owned solar farm under a new lease agreement with Landlord if:

1. Tenant has advised Landlord of Tenant's desire to continue operations in writing a minimum of ninety (90) days prior to the expiration date of the applicable term, as required in this Section 25.a.(1); and
2. Landlord and Tenant have agreed to the new lease provisions at least thirty (30) days prior to the expiration date of this Agreement. The newly negotiated lease shall then begin upon the expiration of this Agreement.

It is understood and agreed that if Tenant and Landlord are unable to agree upon the terms of such new lease, then the provisions of Section 25(a)(ii), below, regarding removal shall apply.

- ii. Remove. Remove the Solar Farm, including the Site Improvements and Infrastructure owned by Tenant and solar panels owned by third parties. Such removal shall be completed during the Final Term, during which time Tenant shall be subject to all terms and conditions in this Agreement with respect to access and said removal.

- b. Abandonment/Noncompliance with Section 25(a). If Tenant either (i) abandons the Leased Premises or (ii) does not provide the notice to Tenant described in Section 25(a) within the time period for such notice described therein, then Landlord shall notify Tenant whether Landlord desires to enter into a new lease as described in Section 25(a)(i) or desires Tenant to remove the Solar Farm as described in Section 25(a)(ii), and the parties shall proceed accordingly; provided however that in the event that Landlord and Tenant have not entered into the new lease described in Section 25(a)(i) at least ten (10) days prior to the expiration of the Term (including the

expiration of any extension to such Term under Section 3), then Tenant shall remove the Solar Farm as set forth in Section 25(a)(ii). If Tenant is obligated under this Section 25 to remove the Solar Farm and fails to do so within the time set forth in Section 25(a)(ii), then Tenant shall be in default, and Landlord, after notice of default and expiration of the applicable cure periods set forth in Section 23 hereof, may remove the Solar Farm at Tenant's cost.

- c. **Decommissioning Security.** Tenant will establish decommissioning security for the removal of the Solar Farm infrastructure upon the expiration/termination of the Lease, in the form of an escrow account (the "Decommissioning Escrow Account") to be funded by Tenant from Solar Farm revenues beginning in the seventh (7<sup>th</sup>) lease year after the Commercial Operations Date (the "Escrow Funding Date"). Beginning in such lease year, and continuing for the succeeding ten (10) years, Tenant shall annually deposit into such escrow account one-tenth of the Approved Decommissioning Estimate (as defined herein). Landlord and Tenant agree to use commercially reasonable efforts to agree upon an escrow agent, and, together with such escrow agent, agree upon the form of escrow agreement and execute such escrow agreement no later than three (3) months prior to the Escrow Funding Date. The "Approved Decommissioning Estimate" shall be developed by an engineer engaged by Tenant, and shall be reviewed and approved by Landlord (such approval not to be unreasonably withheld, conditioned, or delayed). The estimate will estimate the costs of removing all Solar Farm equipment from the surface of the Leased Premises, restoring the surface of the Leased Premises to a condition and contour reasonably similar to that existing on the Leased Premises as of the Effective Date, and reseeded areas where the equipment was located with grasses and/or natural vegetation. The estimate (a) need not include any costs for removing below grade equipment (such as cables, lines or conduit which are buried below grade) or for removal of access roads constructed by Tenant, but (b) will net out from the costs the estimated reuse, salvage, or commodity value of equipment which will be reused or salvaged.

**28. Binding on Successors.** The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto.

**29. Access to Premises.** In addition to the Easement granted in Section 5, Tenant and its engineers, officers, employees, agents, and contractors shall have full access to the Leased Premises during the Term, consistent with Landlord's standard property security policy,

**30. Governing Law.** The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of New Hampshire and jurisdiction and venue shall be exclusively in New Hampshire.

**31. Entire Agreement.** All of the representations and obligations of the parties are contained herein, and no modification, waiver, or amendment of this Agreement or of any of its

conditions or provisions shall be binding upon a party unless in writing signed by that party or a duly authorized agent of that party empowered by a written authority signed by that party. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Agreement.

**32. Intentionally Omitted.**

**33. Oil, Gas and Mineral Rights.** Landlord does not grant, lease, let, or demise hereby, but expressly excepts and reserves herefrom all rights to oil, gas, and other minerals in, on, or under and that might be produced or mined from the Leased Premises; provided, however, that no drilling or other activity will be undertaken on the surface of the Leased Premises to recover any oil, gas, or minerals during the Term hereof, and further provided that any activity associated with such minerals shall not interfere with Tenant's quiet use and enjoyment of the Leased Premises. In the event that there shall exist at any time any mineral rights separate from Landlord's fee interest in the Leased Premises, Landlord shall deliver to Tenant, within ten (10) days of any request Tenant made by Tenant from time to time, such documentation as may be required to ensure that such mineral rights are subordinate and inferior to the rights, privileges, powers, options, immunities, and interests granted to Tenant hereunder and to allow Tenant to obtain an endorsement over such mineral rights in any title commitment or title policy requested by Tenant, including without limitation a non-disturbance agreement executed by Landlord and the holder of such mineral rights, in form acceptable to Tenant .

**34. Indemnities and Release.**

- a. Indemnity by Tenant. **TENANT SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS LANDLORD AND LANDLORD'S AFFILIATES (DEFINED BELOW), SUCCESSORS AND ASSIGNS AND ALL SUCH PARTIES' MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, LICENSEES AND INVITEES (COLLECTIVELY, THE "OWNER PARTIES" OR AN "OWNER PARTY") FROM AND AGAINST LOSSES, LIABILITIES, DAMAGES, COSTS, CLAIMS, SUITS AND CAUSES OF ACTION (INCLUDING LOSSES OR CLAIMS BY THE UNITED STATES OR THE STATE OF NEW HAMPSHIRE ARISING OUT OF THE TERMS AND CONDITIONS OF THE CONSENT DECREE, OR FOR PERSONAL INJURIES OR DEATH AND PROPERTY DAMAGE AND INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF LITIGATION) (COLLECTIVELY, "LOSSES"), IN EACH CASE, TO THE EXTENT ARISING OUT OF ANY ACTIONS OF TENANT OR TENANT'S AFFILIATES, OR SUCH PARTIES' STOCKHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS OR INVITEES ON, OR USE OR OPERATION OF, THE LEASED PREMISES DURING THE TERM, INCLUDING ANY CONSTRUCTION, OPERATION OR DECOMMISSIONING OF THE SOLAR FARM**



OR OTHER IMPROVEMENTS PLACED ON THE LEASED PREMISES BY TENANT (ALL SUCH LOSSES FOR WHICH TENANT IS OBLIGATED TO INDEMNIFY THE LANDLORD PARTIES ARE COLLECTIVELY REFERRED TO AS THE "LANDLORD LOSSES"). HOWEVER, THE LANDLORD LOSSES EXCLUDE ANY LOSSES TO THE EXTENT CAUSED BY ANY LANDLORD PARTY'S ACTIONS OR INACTIONS. NOTWITHSTANDING THE FOREGOING, ANY LANDLORD LOSSES FOR WHICH TENANT IS OBLIGATED TO INDEMNIFY ANY LANDLORD PARTY UNDER THIS AGREEMENT SHALL BE REDUCED BY ANY INSURANCE PROCEEDS ACTUALLY RECOVERED BY SUCH LANDLORD PARTY FOR SUCH LANDLORD LOSSES. TENANT SHALL IN NO CASE BE LIABLE FOR LOST BUSINESS OPPORTUNITIES, LOST PROFITS, OR ANY OTHER SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES THAT MAY RESULT FROM THE CONDUCT OF TENANT'S ACTIVITIES OR OTHERWISE AS A RESULT OF ANY EXERCISE BY TENANT OF ITS RIGHTS UNDER THIS AGREEMENT.

"Affiliate" for purposes of this Agreement means any person or entity which directly or indirectly controls, or is under common control with, or is controlled by, Tenant or Landlord, as applicable. As used in this definition, "control" (including, "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or other ownership interests, by contract or otherwise); any person or entity which owns directly or indirectly ten percent (10%) or more of the securities having ordinary voting power for the election of directors or other governing body of an entity will be deemed to control such entity.

- b. Indemnity by Landlord. ONLY TO THE EXTENT PROVIDED BY RSA CH. 507-B OR ANY OTHER STATUTE AND SUBJECT TO ALL CAPS ON LIABILITY IN RSA CH. 507-B OR OTHER STATUTE, AND WITHOUT WAIVING ANY DEFENSES, INCLUDING BUT NOT LIMITED TO DISCRETIONARY FUNCTION IMMUNITY AND OFFICIAL IMMUNITY, LANDLORD SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TENANT AND TENANT'S AFFILIATES, SUCCESSORS AND ASSIGNS AND ALL SUCH PARTIES' STOCKHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, REPRESENTATIVES, CONTRACTORS, LICENSEES AND INVITEES (COLLECTIVELY, THE "TENANT PARTIES" or a "TENANT PARTY") FROM AND AGAINST LOSSES (AS DEFINED IN ABOVE) TO THE EXTENT ARISING OUT OF ANY LANDLORD OR LANDLORD PARTY'S ACTIONS ON, OR USE, OWNERSHIP OR OPERATION OF, OR OTHER WORK ON

(WHETHER OR NOT SUCH WORK IS PERFORMED AT THE REQUEST OF TENANT OR TENANT PARTIES) THE LEASED PROPERTY OR LANDLORD PROPERTY, BUT EXCLUDING ANY OWNER LOSSES AND ANY LOSSES TO THE EXTENT CAUSED BY ANY TENANT PARTY'S ACTIONS OR INACTIONS. NOTWITHSTANDING THE FOREGOING, ANY LOSSES FOR WHICH LANDLORD IS OBLIGATED TO INDEMNIFY ANY LANDLORD PARTY UNDER THIS AGREEMENT SHALL BE REDUCED BY ANY INSURANCE PROCEEDS ACTUALLY RECOVERED BY SUCH TENANT PARTY FOR SUCH LOSSES.

- c. Environmental Indemnity by Landlord. ONLY TO THE EXTENT PROVIDED BY RSA CH. 507-B OR ANY OTHER STATUTE AND SUBJECT TO ALL CAPS ON LIABILITY IN RSA CH. 507-B, AND WITHOUT WAIVING ANY DEFENSES, INCLUDING BUT NOT LIMITED TO DISCRETIONARY FUNCTION IMMUNITY AND OFFICIAL IMMUNITY, LANDLORD SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS TENANT AND TENANT PARTIES FROM AND AGAINST ANY AND ALL DAMAGES, LOSSES, LIABILITIES, OBLIGATIONS, PENALTIES, CLAIMS, LITIGATION, DEMANDS, DEFENSES, JUDGMENTS, SUITS, ACTIONS, PROCEEDINGS, COSTS, DISBURSEMENTS OR EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' AND EXPERTS' FEES, EXPENSES AND DISBURSEMENTS INCURRED WHETHER BY REASON OF THIRD PARTY CLAIMS OR TO ENFORCE THE TERMS, CONDITIONS AND PROVISIONS OF THIS INDEMNIFICATION PROVISION) OF ANY KIND OR NATURE WHATSOEVER WHICH MAY AT ANY TIME BE IMPOSED UPON, INCURRED BY OR ASSERTED OR AWARDED AGAINST THE TENANT OR TENANT PARTIES RELATING TO, RESULTING FROM OR ARISING OUT OF (I) THE CONDITIONS OF THE ENVIRONMENT, INCLUDING BUT NOT LIMITED TO, THE PRESENCE OF ANY HAZARDOUS MATERIALS OR WASTE OR A RELEASE OR DISPOSAL OR THE THREAT OF A RELEASE OR DISPOSAL OF ANY HAZARDOUS MATERIALS OR WASTE ON, IN, UNDER, OR ABOUT THE LEASED PREMISES AND THE SOLAR FARM, (A) EXISTING AT ANY TIME PRIOR TO THE EFFECTIVE DATE, AND/OR (B) EXISTING AT ANY TIME PRIOR TO OR AFTER THE EFFECTIVE DATE WITH RESPECT TO OR ARISING FROM THE PRIOR OR CURRENT OPERATION OR USE OF THE LEASED PREMISES AS A LANDFILL OR OTHER WASTE DISPOSAL SITE OR FOR THE STORAGE, TREATMENT, GENERATION, TRANSPORTATION, PROCESSING, HANDLING, MANAGEMENT, OR DISPOSAL OF ANY HAZARDOUS MATERIALS OR WASTES, OR FOR INDUSTRIAL PURPOSES OR FOR THE COMMERCIAL STORAGE OF PETROLEUM OR

**PETROLEUM BASED PRODUCTS; (II) ANY VIOLATION BY LANDLORD OR ANY LANDLORD PARTY OF ANY APPLICABLE ENVIRONMENTAL LAW; (III) THE FAILURE BY LANDLORD OR ANY LANDLORD PARTY TO PROMPTLY UNDERTAKE AND DILIGENTLY PURSUE TO COMPLETION ALL NECESSARY, APPROPRIATE AND/OR LEGALLY REQUIRED INVESTIGATIVE, ASSESSMENT, CONTAINMENT, REMOVAL, CLEANUP AND OTHER REMEDIAL ACTIONS, OR LANDFILL CLOSURE OR POST-CLOSURE ACTIVITIES WITH RESPECT TO THE PRESENCE OF ANY HAZARDOUS MATERIALS OR WASTES OR A RELEASE OR THE THREAT OF A RELEASE OF ANY HAZARDOUS MATERIALS OR WASTES ON, IN, UNDER, OR ABOUT THE LEASED PREMISES AND THE SOLAR FARM; (V) HUMAN EXPOSURE TO ANY HAZARDOUS MATERIALS, WASTES, NOISES, VIBRATIONS OR NUISANCES OF WHATEVER KIND TO THE EXTENT THE SAME ARISE FROM THE PRE-EXISTING CONDITION OF THE LEASED PREMISES OR THE OWNERSHIP, USE, OR OPERATION THEREOF OF THE LEASED PREMISES AS A LANDFILL OR OTHER WASTE DISPOSAL SITE; AND (VI) THE COSTS OF ANY REQUIRED OR NECESSARY INVESTIGATION, ASSESSMENT, TESTING, REPAIR, CLEANUP, CLOSURE OR POST-CLOSURE MEASURES, OR DETOXIFICATION OF THE LEASED PREMISES OR THE SOLAR FARM OF WHATEVER KIND TO THE EXTENT THE SAME ARISE FROM THE PRE-EXISTING CONDITION OF THE LEASED PREMISES AND SOLAR FARM OR THE OWNERSHIP, USE, OR OPERATION THEREOF OF THE LEASED PREMISES AS A LANDFILL OR OTHER WASTE DISPOSAL SITE. THIS INDEMNIFICATION SHALL SURVIVE ANY TERMINATION, CONVEYANCE, ASSIGNMENT, SUBLEASING OR DEFEASANCE OF ANY RIGHT, TITLE OR INTEREST OF THE TENANT IN AND TO THE LEASED PREMISES UNDER THIS AGREEMENT.**

- d. As used herein, the term “**Hazardous Material(s)**” includes, without limitation, any hazardous or toxic material, substance, or waste which is (A) defined, classified, designated, listed or otherwise considered under any Environmental Law as a “solid waste,” “hazardous waste,” “hazardous substance,” “hazardous material,” “extremely hazardous waste,” “acutely hazardous waste,” “radioactive waste,” “biohazardous waste,” “pollutant,” “toxic pollutant,” “contaminant,” “restricted hazardous waste,” “infectious waste,” “toxic substance,” or any other term or expression intended to define, list, regulate or classify substances by reason of properties harmful to health, safety or the environment, (B) any flammable, explosive, radon, radioactive materials, asbestos, asbestos containing material, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, or related materials



(C) any oil, petroleum, petroleum based product or petroleum additive, derived substance or breakdown product, (D) polychlorinated biphenyls (PCBs), (E) lead and lead-containing materials; (G) any other material, waste or substance displaying toxic, reactive, ignitable or corrosive characteristics, as all such terms are used in their broadest sense, and are defined or become defined by any Environmental Law as hereinafter defined; and (F) any materials which cause or threaten to cause a nuisance upon or waste to any portion of the Leased Premises or any surrounding property; or poses or threatens to pose a hazard to the health and safety of persons on the Leased Premises, the Solar Farm, or any surrounding property. As used herein, the term, “**Environmental Laws**” means any and all federal, state and local statutes, ordinances, orders, rules, regulations, guidance documents, judgments, governmental authorizations, or any other requirements of governmental authorities, as may presently exist or as may be amended or supplemented, or hereafter enacted or promulgated, relating to the presence, release, generation, use, handling, treatment, storage, transportation or disposal of Hazardous Materials or solid wastes, or the protection of the environment or human, plant or animal health, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act of 1980, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), and the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Federal Waters Pollution Control Act, as amended (33 U.S.C. Sections 1251, et seq.), or any other applicable Environmental Law and the regulations promulgated thereunder. As used herein, the term “Release” has the same meaning as given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

- e. Release. Except as otherwise provided in this Agreement, Tenant shall have no obligation or liability to Landlord, any third party, or governmental entity, for (a) any Hazardous Materials or wastes present in, on or under the Leased Premises or the Solar Farm, including but not limited to, any Hazardous Materials or wastes present in the ground water, on or prior to the Effective Date, or (b) any Hazardous Materials or wastes in, on or under the Leased Premises or the Solar Farm, including but not limited to, any Hazardous Materials or other wastes present in the groundwater, arising from the use of the Leased Premises as a landfill, waste disposal site, or other prior use, regardless of whether such Hazardous Materials arise prior to or after the Effective Date, or are not known or discovered until after the Effective Date, or (c) any Hazardous Materials or wastes on, under or from any property adjoining or proximate to the Leased Premises or the Solar Farm that may affect the Leased Premises or the Solar Farm, or (d) with

respect to the generation, presence, use or release by Landlord or an Landlord Party, of any Hazardous Materials or wastes in, on or under the Leased Premises or the Solar Farm.

- f. Recognition of Dangers. **LANDLORD RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY OF THE SITE IMPROVEMENTS AND INFRASTRUCTURE. LANDLORD AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE LANDLORD PARTIES TO DO THE SAME. LANDLORD SHALL TAKE REASONABLE MEASURES TO AVOID ALL RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE PRODUCTION AND TRANSMISSION OF ELECTRICITY AND LANDLORD WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER (WHETHER CURRENTLY EXISTING OR THAT MAY OTHERWISE ARISE OR ACCRUE AT ANY TIME IN THE FUTURE) THAT LANDLORD POSSESSES OR OTHERWISE MAY POSSESS AGAINST TENANT PARTIES ARISING FROM OR RELATING TO SUCH RISKS; PROVIDED, HOWEVER, SUCH WAIVER SHALL NOT BE EFFECTIVE TO THE EXTENT TENANT ENGAGES IN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**
- g. Hazardous Materials and Other Wastes; Consent Decree Requirements.
- (i) To the best of Landlord's knowledge, except as disclosed on Exhibit D attached hereto, as of the Effective Date, there are no Hazardous Materials or other wastes located on the Leased Premises and the Leased Premises has not been used for the generation, treatment, storage or disposal of Hazardous Materials or other wastes, no underground storage tanks have ever been located on the Leased Premises nor are any underground storage tanks presently located on the Leased Premises.
  - (ii) Landlord is in compliance with all applicable Environmental Laws and with the Consent Decree Requirements.
  - (iii) Landlord shall remain in compliance at all times with all applicable Environmental Laws and with the Consent Decree Requirements.
  - (iv) During the Option Period and in order to comply with the Consent Decree Requirements and to obtain authorization for the Solar Farm at the Leased Premises that is acceptable to all parties, Landlord shall be responsible for all necessary activities related to applying, filing and securing all permits, approvals and consents from appropriate Governmental Agencies with authority to regulate the Consent Decree Requirements that are necessary or desirable to

authorize construction and operation of the Solar Farm on the Leased Premises (collectively, "Consent Decree Approvals"). With respect to such permit requirements specific to construction of the Solar Farm, Tenant shall cooperate with Landlord in securing such permits, approvals and consents. Unless otherwise required by law or court order, Landlord shall not agree to any conditions that will adversely affect the construction of the Solar Farm and Site Improvements and Infrastructure without prior written approval of Tenant. Landlord shall cooperate with Tenant in its Consent Decree Approvals including, without limitation, incorporating Tenant's reasonable comments and suggestions in the amended, revised or updated Consent Decree Requirements and any submittals for permits, approvals or consents; providing regular notice to Tenant of Consent Decree Approvals; and, unless otherwise agreed to in writing, delivering to Tenant copies of any applications, submittals, conditions, or plans for review and prior approval by Tenant at least ten (10) days before Landlord submits or approves such documents to the appropriate Governmental Agency. Notwithstanding anything to the contrary herein, Landlord shall obtain the prior written approval of Tenant prior to submitting and finalizing any revisions or amendments to the Consent Decree Approvals. Tenant shall reimburse Landlord for its out-of-pocket expenses of securing such permits, approvals and consents that are directly related to Tenant's Solar Farm. Tenant shall reimburse Landlord within thirty (30) days of receipt of an invoice with reasonable documentation of the costs incurred.

Such permits, approvals, and consents shall include, as applicable, but shall not be limited to, any (i) disruption approvals, (ii) necessary revisions to the Consent Decree Approvals, (iii) Site Remediation Program approvals or consents, and (iv) a release of liability or other comfort letter, in form and substance acceptable to Tenant, stating that Tenant will not be held liable by the State or the EPA, for Hazardous Materials or waste on, in, under, or about the Landlord Property and the Leased Property, (a) existing at any time prior to the Effective Date, and/or (b) existing at any time prior to or after the Effective Date with respect to or arising from the prior or current operation or use of the Leased Premises as a landfill or other waste disposal site or for the storage, treatment, generation, transportation, processing, handling, management, or disposal of any Hazardous Materials or wastes, or for industrial purposes or for the commercial storage of petroleum or petroleum based products, any violation by Landlord or an Landlord Party of any applicable Environmental Law, the failure by Landlord or any Landlord Party to promptly undertake and diligently pursue to completion all necessary, appropriate and/or legally required investigative, containment, removal, cleanup and other remedial actions, or

landfill closure or post-closure activities with respect to the presence of any Hazardous Materials or wastes or a release or the threat of a release of any Hazardous Materials or wastes on, in, under, or about the Leased Premises and the Landlord Property, human exposure to any Hazardous Materials, wastes, noises, vibrations or nuisances of whatever kind to the extent the same arise from the pre-existing condition of the Leased Premises or the ownership, use, or operation thereof of the site as a landfill or other waste disposal site, and the costs of any required or necessary investigation, assessment, testing, repair, cleanup, closure or post-closure measures, or detoxification of the Leased Premises of whatever kind to the extent the same arise from the pre-existing condition of the Leased Premises or the ownership, use, or operation thereof of the Leased Premises as a landfill or other waste disposal site.

- h. Landlord represents and warrants that, except as disclosure by Landlord in Exhibit D attached hereto, to the best of Landlord's knowledge, (i) neither the Leased Premises nor any part thereof is in breach of any Environmental Laws, and (ii) the Leased Premises are free of any Hazardous Materials that would trigger response or remedial action under any Environmental Laws or any existing common law theory based on nuisance or strict liability. If any such representation is in any manner inaccurate or any such warranty is in any manner breached during the term of this Agreement (collectively, a "Breach"), and if such Breach gives rise to or results in liability (including, but not limited to, a response action, remedial action, or removal action) under any Environmental Laws or any existing common law theory based on nuisance or strict liability, or causes a significant effect on public health, Landlord shall promptly take any and all remedial and removal action as required by law to clean up the Leased Premises and mitigate exposure to liability arising from, and keep the Leased Premises free of any lien imposed pursuant to, any Environmental Laws as a result of such Breach.
- i. Landlord represents and warrants to Tenant that Landlord has received no notice that the Leased Premises or any part thereof is, and, to the best of its knowledge and belief, no part of, the Leased Premises is located within, an area that has been designated by the Federal Emergency Management Agency, the Army Corps of Engineers, or any other governmental body as being subject to special hazards, including floodplains.
- j. The covenants of this Section shall survive and be enforceable and shall continue in full force and effect for the benefit of Tenant and its subsequent transferees, successors, and assigns and shall survive the Term of this Lease and any renewal periods thereof.

**35. Mechanic's Liens.** Tenant will not cause any mechanic's or materialman's lien to be placed on the Leased Premises, and Tenant agrees to indemnify, defend, and hold harmless Landlord from any such lien from a party claiming by, through, or under Tenant.

36. **Headings.** The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

37. **Time of Essence.** Time is of the essence for Landlord's and Tenant's obligations under this Agreement.

38. **Severability.** If any section, subsection, term, or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term, or provision of the Agreement, or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term, or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.

39. **Real Estate Broker.** Each party represents and warrants to the other that it has not signed a listing agreement, dealt with, or otherwise agreed to pay a broker's commission, finder's fee, or other like compensation to anyone in connection with the lease of the Leased Premises or the transaction contemplated by this Agreement, and each party agrees to indemnify and hold the other party harmless from and against any such claims or costs, including attorneys' fees, incurred as a result of the transaction contemplated by this Agreement.

40. **Further Assurances.** Each of the parties agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence, or confirm this Agreement or any other agreement contained herein in the manner contemplated hereby.

41. **Dispute Resolution.** Any dispute between Landlord and Tenant arising under this Agreement shall in the first instance be addressed by taking the following steps; 1) by informal negotiations between Landlord and Tenant following an exchange of written notice of and response to said dispute and for a period of time not to exceed 45 days unless extended by mutual agreement; and if not resolved by negotiations, then 2) by arbitration conducted by an impartial, neutral arbitrator consistent with the guidelines of the American Arbitration Association.

42. **Right to Record.** The Tenant shall have the right to prepare, execute and record a memorandum of lease, setting forth the general terms of the Lease and such other information as Tenant deems necessary. Landlord shall execute and deliver such memorandum of lease within five (5) business days of delivery of such memorandum of lease by Tenant to Landlord. Tenant shall provide the Landlord a copy of the recorded Memorandum of Lease after recordation by the Rockingham County Registry of Deeds.

43. **Tax Credits.** If under applicable law the holder of any interest under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Tenant's option, Landlord and Tenant shall amend this Agreement or replace it with a different instrument so as to convert Tenant's interest in the Property to a substantially similar interest that makes Tenant eligible for such tax credit, benefit or incentive; provided, however, that nothing in this Agreement

shall entitle Tenant to a fee interest in the Leased Premises, diminish Tenant's payment obligations under this Agreement or extend the Term of this Agreement.

**44. Attorneys' Fees.** The prevailing party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement or for the interpretation of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing party.

**45. Interpretation.** Each party to this Agreement and its counsel have reviewed and revised this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any-amendments or exhibits to this Agreement.

[SIGNATURES ON NEXT PAGE]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement, as a sealed instrument, as of the day and year first above written.

**LANDLORD:**

**TENANT:**

TOWN OF LONDONDERRY

SUPERFUND SOLAR LLC (or Assigns)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF NEW HAMPSHIRE )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public in and for said State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed such document voluntarily for its stated purpose (as Landlord).

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF NEW HAMPSHIRE )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, before me, the undersigned notary public in and for said State, personally appeared \_\_\_\_\_ proved to me on the basis of satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed such document voluntarily for its stated purpose (as Landlord).

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

## EXHIBIT A-1

### LEGAL DESCRIPTION OF THE LANDLORD PROPERTY

A certain tract or parcel of land, with the buildings thereon, if any, situated in the Town of Londonderry, County of Rockingham, State of New Hampshire, being more particularly bounded and described as follows:

Beginning at a stake and stones on the Easterly side of the Auburn Road, so-called, on the line of land formerly of William G. Hardy; thence, S 53° E 79 rods and 13 links to a stake and stones at corner of land formerly of Hezekiah B. Lamprey; thence, N 26 1/2° E 43 rods to a stake and stones at the highway leading from land formerly of Samuel Martin to land formerly of Daniel Wilkins; thence, S 46 1/2 ° E 19.5 rods to a stake and stones; thence, across said highway 36° E 64 rods to a stake and stones at the end of a wall; thence, N 25° E 67 rods to a stake and stones; thence, N 72 1/4° W 28 rods to a stake and stones; thence, N 20 1/2° E 67 rods and 7 links to a stake and stones; thence, N 69° W 32 rods to a stake and stones; thence, by said Auburn Road 220 rods and 12 links to the bound first mentioned.

Also a certain tract or parcel of land situated in said Londonderry, bounded and described as follows: Beginning at a stake and stones on the Northerly side of the highway from Derry to Manchester, being the Southwesterly corner of said described premises; thence, N 36° E about 64 rods; thence, N 25° E about 132 rods and 3 links; thence, N 69° W 64 rods to the highway from Wilson's Crossing, so called, to Auburn; thence, by said-last named highway to land now or formerly of one Platts, about 57 rods; thence, S 66° 11' E to a stone marked "P.D." about 118 rods; thence S 23° 53' W about 181 rods and 19 links to a stake and stones; thence, S 43° E about 18 rods and 4 links; thence, S 47° 7' W about 101 rods and 13 links to said highway from Derry to Manchester; thence, along said highway about 89 rods to the place of beginning.

Also a certain other tract or parcel of land, situated in said Londonderry bounded and described as follows; Beginning at a stake and stones at land now or formerly of one L. Dickey and at the Southeast corner of said described land; thence, Northerly to a stake and stones about 49 1/2 rods on line of land of Dickey hereinbefore named, and Hellen J. Lockwood et al; thence, Easterly on said last named line about 20 rods; thence, S 25°W about 49 1/2 rods; thence, Westerly about 20 rods to the point of beginning.

Less, excepting and reserving from the above-described property, certain tracts or parcels as recorded in the Rockingham County Registry at Volume 1120, Page 449, dated 12/28/48; Volume 1311, Page 412 to Rheaume; Volume 1355, Page 62, dated 5/13/55 to Simard; Volume 1776, Page 182 to Galene; Volume 1796, Page 77 to Gagne; Volume 1870, Page 452 to Legendre; Lot 5 on Plan 5868, Volume 1870, Page 453; Lot 10 on Plan 5868, Volume 1978, Page 44; Lot 8 on Plan 5868, Volume 2028, Page 157; Lot 13 on Plan 5868, Volume 2113, Page 268; Lots 11 and 12 on Plan 5868, Volume 2161, Page 413; Lot 7 on Plan 5868, Volume 2164, Page 166; Lot 9 on Plan 5868, Volume 2195, Page 1710; Lot 14 on Plan 5868, Volume 2195, Page 1711; Lot 4 on Plan 5868, Volume 2205, Page 682; Lot 15 on Plan 5868, Volume 2209, Page 1517; Volume 1654, Page 392, dated 12/12/62 to Roux; Lot 1-A on Plan 3691, Volume 2585, Page 630; Lots 6 and 7



on Plan 3691, Volume 2630, Page 1260; Volume 2630, Page 2464 to DARG Realty Trust, dated 3/6/84.

Also less, excepting and reserving to the grantors from the above-described parcels a certain tract or parcel of land with Buildings thereon shown as Lot #2 on plan entitled "Subdivision by George Thomopoulos, Londonderry Rockingham County, New Hampshire dated July 15, 1967"; recorded at the Rockingham County Registry of Deeds as Plan #D-5868, bounded and described as follows:

Beginning at an iron pin on the northerly side of Old Manchester Derry Road and the southerly comer of Lot #1 now or formerly of Lacopolis, thence running N 65° 60' E along said Lot #1 a distance of 425 feet more or less to an iron pin set at other land of the grantor; thence turning and running S 35° 18' E along other land of the grantor a distance of 180 feet more or less to an iron pipe set at a 51-foot right of way shown on said plan; thence turning and running S 58° 15' W along said right of way a distance of 445 feet more or less to an iron pipe set at the northerly line of Old Manchester Derry Road; thence turning and running along said road N 27° 09' W a distance of 225 feet more or less to the point of beginning. Said Lot contains 86,450 square feet more or less.

## EXHIBIT A-2

### LEGAL DESCRIPTION OF THE LEASED PREMISES

A certain tract or parcel of land, with the buildings thereon, if any, situated in the Town of Londonderry, County of Rockingham, State of New Hampshire, being more particularly bounded and described as follows:

Beginning at a stake and stones on the Easterly side of the Auburn Road, so-called, on the line of land formerly of William G. Hardy; thence, S 53° E 79 rods and 13 links to a stake and stones at corner of land formerly of Hezekiah B. Lamprey; thence, N 26 1/2° E 43 rods to a stake and stones at the highway leading from land formerly of Samuel Martin to land formerly of Daniel Wilkins; thence, S 46 1/2 ° E 19.5 rods to a stake and stones; thence, across said highway 36° E 64 rods to a stake and stones at the end of a wall; thence, N 25° E 67 rods to a stake and stones; thence, N 72 1/4° W 28 rods to a stake and stones; thence, N 20 1/2° E 67 rods and 7 links to a stake and stones; thence, N 69° W 32 rods to a stake and stones; thence, by said Auburn Road 220 rods and 12 links to the bound first mentioned.

Also a certain tract or parcel of land situated in said Londonderry, bounded and described as follows: Beginning at a stake and stones on the Northerly side of the highway from Derry to Manchester, being the Southwesterly corner of said described premises; thence, N 36° E about 64 rods; thence, N 25° E about 132 rods and 3 links; thence, N 69° W 64 rods to the highway from Wilson's Crossing, so called, to Auburn; thence, by said-last named highway to land now or formerly of one Platts, about 57 rods; thence, S 66° 11' E to a stone marked "P.D." about 118 rods; thence S 23° 53' W about 181 rods and 19 links to a stake and stones; thence, S 43° E about 18 rods and 4 links; thence, S 47° 7' W about 101 rods and 13 links to said highway from Derry to Manchester; thence, along said highway about 89 rods to the place of beginning.

Also a certain other tract or parcel of land, situated in said Londonderry bounded and described as follows; Beginning at a stake and stones at land now or formerly of one L. Dickey and at the Southeast corner of said described land; thence, Northerly to a stake and stones about 49 1/2 rods on line of land of Dickey hereinbefore named, and Hellen J. Lockwood et al; thence, Easterly on said last named line about 20 rods; thence, S 25°W about 49 1/2 rods; thence, Westerly about 20 rods to the point of beginning.

Less, excepting and reserving from the above-described property, certain tracts or parcels as recorded in the Rockingham County Registry at Volume 1120, Page 449, dated 12/28/48; Volume 1311, Page 412 to Rheume; Volume 1355, Page 62, dated 5/13/55 to Simard; Volume 1776, Page 182 to Galene; Volume 1796, Page 77 to Gagne; Volume 1870, Page 452 to Legendre; Lot 5 on Plan 5868, Volume 1870, Page 453; Lot 10 on Plan 5868, Volume 1978, Page 44; Lot 8 on Plan 5868, Volume 2028, Page 157; Lot 13 on Plan 5868, Volume 2113, Page 268; Lots 11 and 12 on Plan 5868, Volume 2161, Page 413; Lot 7 on Plan 5868, Volume 2164, Page 166; Lot 9 on Plan 5868, Volume 2195, Page 1710; Lot 14 on Plan 5868, Volume 2195, Page 1711; Lot 4 on Plan 5868, Volume 2205, Page 682; Lot 15 on Plan 5868, Volume 2209, Page 1517; Volume 1654, Page 392, dated 12/12/62 to Roux; Lot 1-A on Plan 3691, Volume 2585, Page 630; Lots 6 and 7

on Plan 3691, Volume 2630, Page 1260; Volume 2630, Page 2464 to DARG Realty Trust, dated 3/6/84.

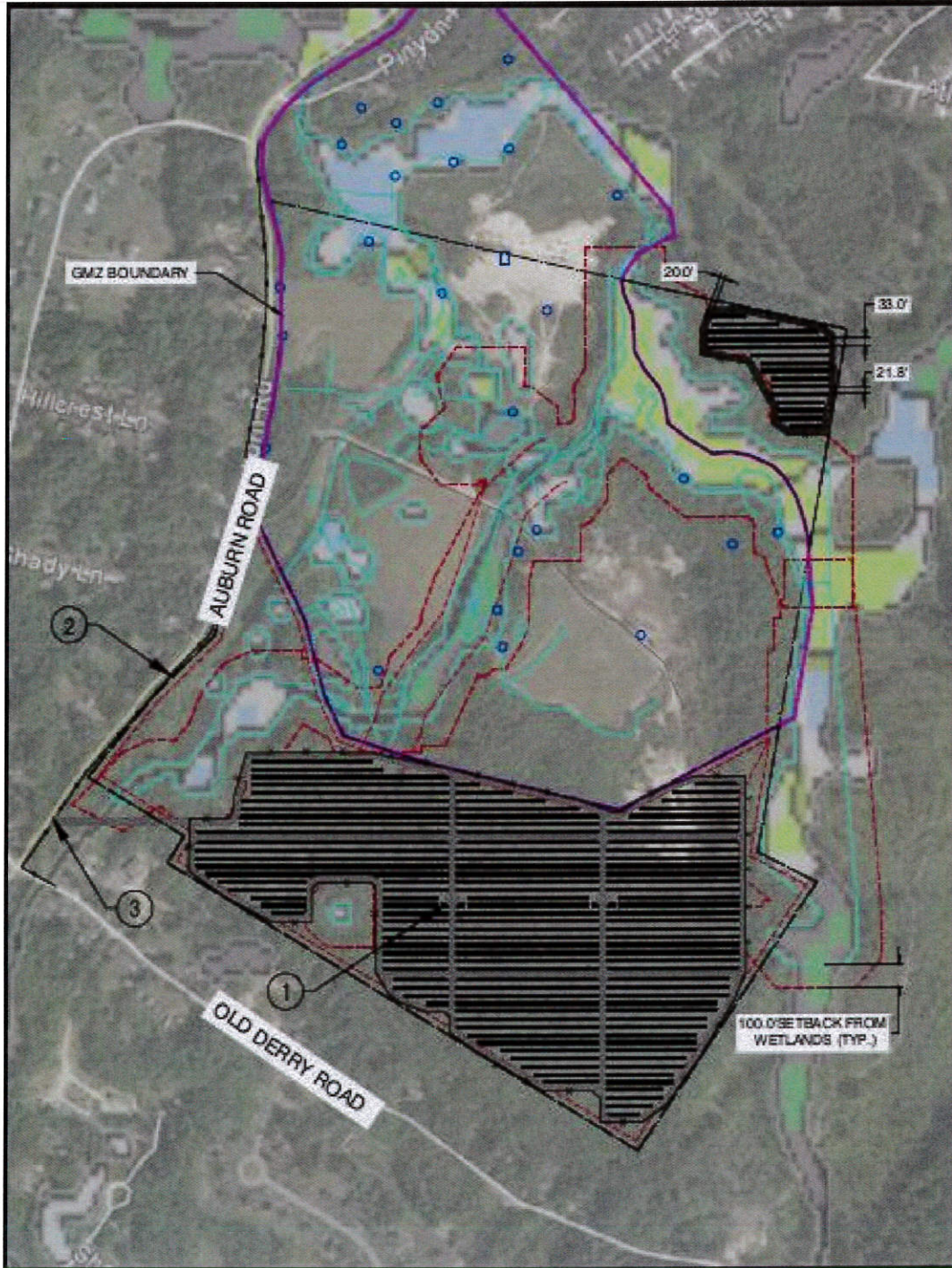
Also less, excepting and reserving to the grantors from the above-described parcels a certain tract or parcel of land with Buildings thereon shown as Lot #2 on plan entitled "Subdivision by George Thomopoulos, Londonderry Rockingham County, New Hampshire dated July 15, 1967"; recorded at the Rockingham County Registry of Deeds as Plan #D-5868, bounded and described as follows:

Beginning at an iron pin on the northerly side of Old Manchester Derry Road and the southerly corner of Lot #1 now or formerly of Lacopolis, thence running N 65° 60' E along said Lot #1 a distance of 425 feet more or less to an iron pin set at other land of the grantor; thence turning and running S 35° 18' E along other land of the grantor a distance of 180 feet more or less to an iron pipe set at a 51-foot right of way shown on said plan; thence turning and running S 58° 15' W along said right of way a distance of 445 feet more or less to an iron pipe set at the northerly line of Old Manchester Derry Road; thence turning and running along said road N 27° 09' W a distance of 225 feet more or less to the point of beginning. Said Lot contains 86,450 square feet more or less.

**EXHIBIT B-1**

**TENANT'S SURVEY OF THE LEASED PREMISES**

NOTE: To be revised by Tenant based upon the Survey referenced in Section 2.

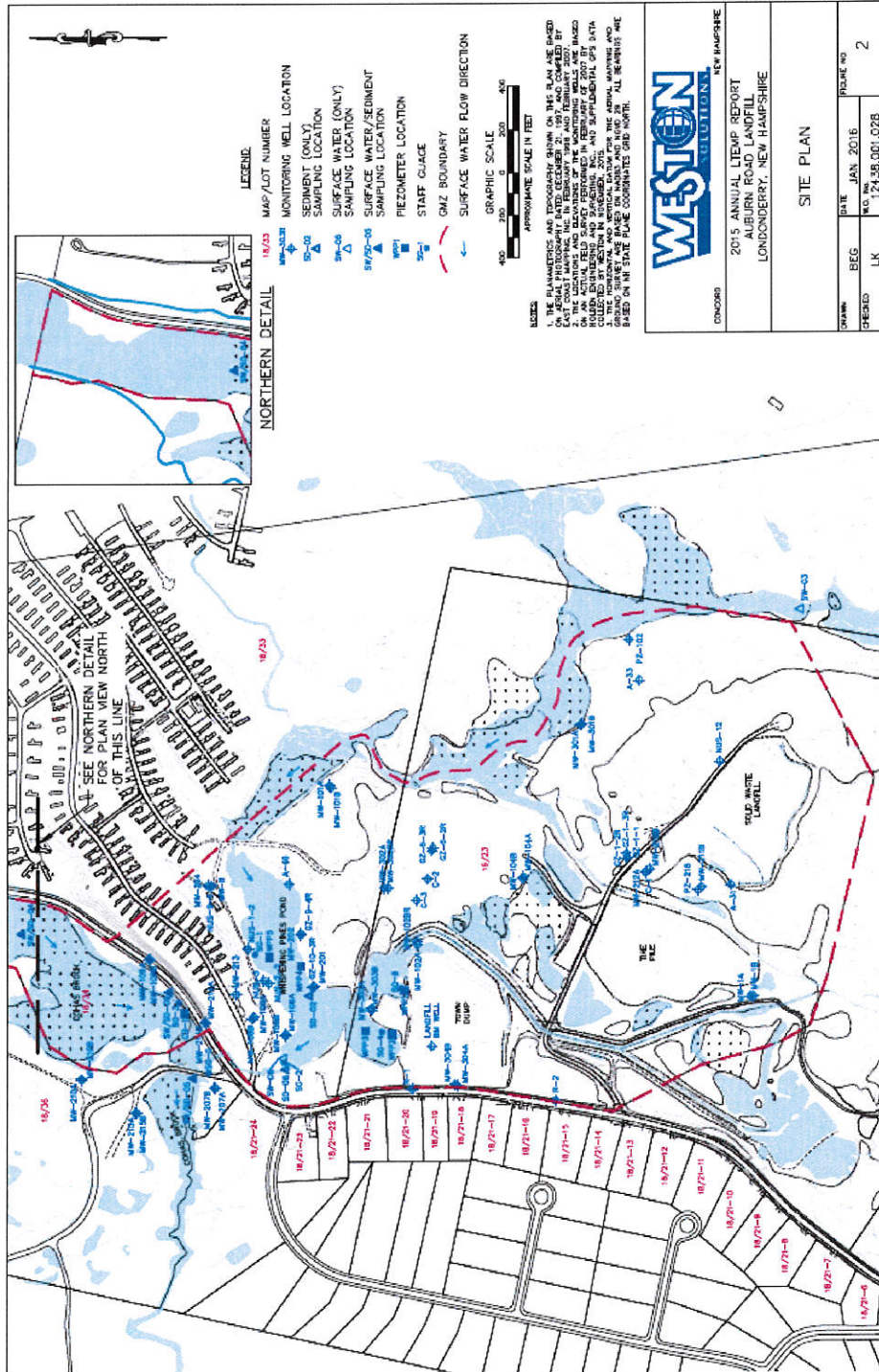




# EXHIBIT B-2

## THE GMZ SITE PLAN

NOTE: GMZ was modified December 2012. See 2015 Annual Report, p. 1-7.



**EXHIBIT C**

**LANDLORD ACKNOWLEDGEMENT OF  
COLLATERAL ASSIGNMENT OF LEASE AGREEMENT**

THIS LANDLORD CONSENT TO COLLATERAL ASSIGNMENT OF LEASE AGREEMENT (this "Consent") is granted and made by \_\_\_\_\_ ("Landlord") in connection with that certain Land Lease Option Agreement dated \_\_\_\_\_, 20\_\_ (the "Lease") by and between Landlord and \_\_\_\_\_ as Tenant.

1. Tenant has entered into a Loan Agreement ("Loan Agreement") with \_\_\_\_\_ ("Lender") for the extension of credit (the "Loan") in regard to a solar electric generating facility referred in said Loan Agreement as the "Solar Facility" and in said Lease and this Consent as the "Solar Farm".
2. Tenant as borrower under the Loan Agreement, has executed a Collateral Assignment in favor of Lender whereby Tenant is giving Lender a pledge, mortgage, and/or collateral assignment of all of its right, title and interest arising under the Lease as tenant of the Leased Premises, and providing Lender such other rights as set forth in such Collateral Assignment.
3. Tenant hereby consents to the Collateral Assignment of the Lease given from Tenant to Lender. Landlord acknowledges that in this connection, Lender shall be entitled to perform any obligation under the Lease in lieu of the performance of such obligation by Tenant, but that Lender shall not be obligated to perform any such obligation.
4. Landlord also acknowledges and agrees that the following statements are true and correct:
  - a. Landlord is the fee owner of the Leased Premises described in the Lease, and (1) a true and correct copy of the Lease is attached hereto as Exhibit 1; (2) the Lease is in full force and effect; (3) Landlord has not modified, amended or changed the Lease in any material respect; (4) to the best of Landlord's knowledge, the Lease constitutes the entire agreement between Landlord and Tenant with respect to the Leased Premises; and (5) to the actual knowledge of Landlord, (i) there are no existing defaults by Tenant under the Lease, (ii) all amounts due under the Lease from Tenant to Landlord as of the date of this Consent have been paid; and (iii) there are no leases in effect to which the Landlord's use of the Leased Premises shall be subordinate.
  - b. Tenant owns the Solar Farm including without limitation all Site Improvements and Infrastructure (as defined in the Lease) and all related fixtures and personal property. Landlord does not own any personal



property that is located on the Premises, and agrees that Landlord shall not pursue any liens or claims whatsoever against said Solar Farm, Site Improvements, Infrastructure, fixtures and personal property.

- c. Except those interests appearing in the records of the county recorder(s) where the Solar Farm is situated, Landlord has not granted any interests in the Leased Premises to any person or entity other than Tenant, and as long as Tenant is not in default of the Lease, Landlord will ensure Tenant's quiet enjoyment of the Leased Premises in accordance with the terms and conditions of the Lease.

5. Landlord also acknowledges and consents:

- a. To Tenant's execution of a leasehold mortgage or deed of trust encumbering Tenant's leasehold estate under the Lease and the Solar Farm.
- b. To Lender's access to the Leased Premises as necessary to inspect or protect its Collateral.
- c. To provide upon request of Lender, as a collateral assignee of rights under the Lease, subsequent signed statements indicating whether or not any defaults exist under the Lease, and addressing such other matters concerning the Leased Premises and the Lease as Lender may reasonable request.
- d. To the recording by Tenant or Lender of the Collateral Assignment and this Consent of Landlord thereto.

6. Landlord acknowledges that all notices to Tenant under the Lease Agreement shall be sent to:

\_\_\_\_\_  
Attn: \_\_\_\_\_

\_\_\_\_\_

Telecopier Number: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

with a copy in each case to:

[Lender Information]

*Signatures on Next Page*

IN WITNESS WHEREOF, Landlord subscribes this Landlord Acknowledgement Of Collateral Assignment as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

LANDLORD:

\_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY \_\_\_\_\_ . to wit:

The foregoing instrument was acknowledged before me in my jurisdiction aforesaid this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, who is \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, for and on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for  
My Commission Expires:

## EXHIBIT D

### LANDLORD ENVIRONMENTAL DISCLOSURES

The Leased Premises is located within and adjacent to the Auburn Road Landfill Superfund site (the "Landfill"). The 200-acre Landfill includes three separate disposal areas – the former Londonderry Town Dump, which operated during the 1960s and was used for the disposal of over 1,000 drums of chemical waste; a tire disposal area, where tires and demolition debris and several hundred drums of chemical waste were dumped; and a solid waste landfill, the largest disposal area, which was active until the State ordered the entire landfill closed in 1980 after hazardous wastes were identified in soil, and toxic organic substances were found in surface water and groundwater.

In 1983, the Landfill was placed on the National Priorities List ("NPL") by the Environmental Protection Agency ("EPA") under Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "Superfund").

Cleanup has been addressed in four stages: initial actions and three long-term remedial phases focusing on providing a municipal water supply, cleaning the groundwater contamination, and capping the site. In 1986, EPA excavated about 1,900 drums in three locations and then restored two of the excavated areas. Drums were consolidated, covered, sampled, and sent off-site for disposal. Between 1987 and 1988, the four disposal areas were fenced off and warning signs were posted. In 1988, EPA excavated an additional 316 drums from a tire dump area.

The cleanup plan formalized in 1989 also specified that a multi-layer cap be placed over the solid waste area, the town dump area, and the tire dump area to reduce the spread of contaminants into groundwater. The Town of Londonderry finished building the multi-layer caps in 1996. The cleanup plan originally called for landfill capping and pumping and treating of groundwater, but because of the decline in VOC concentrations, a revised plan called for monitored natural attenuation as an interim remedy.

Prior to 1987, all of the local residents near the Landfill used groundwater as a drinking water source. In 1987, the Town of Londonderry extended a municipal drinking water supply to potentially affected groundwater users in the area along portions of Auburn Road (including Whispering Pines Pond Mobile Home Park), Longwood Avenue, and Shady Lane. Institutional controls (i.e., Groundwater Management Permit ("GMP") No. GWP-198803007-L-002) have been implemented and notices of the permit requirements have been attached to all lots of record within the established Groundwater Management Zone ("GMZ") for the Site.

A final settlement was reached in 1999 with potentially responsible parties for payment of past and future response costs and for any future remedial actions. On or about November 22, 1999, the EPA, Department of Environmental Services ("DES") and the Potentially Responsible Parties ("PRP"), including the Town of Londonderry, filed a Consent Decree in the United States District Court, District of New Hampshire to resolve litigation filed regarding site remediation. A copy of the Consent Decree can be obtained at <https://semspub.epa.gov/work/01/244198.pdf>.

The last Five-Year Review Report prepared by EPA is dated September 14, 2017 and can be found at <https://semspub.epa.gov/work/01/606181.pdf>. The Five-Year Report provides a summary of response actions taken at the Landfill, current cleanup goals, the status of implementation of the remedy and the operation and maintenance of the remedial system and recommendations.

EPA maintains a Superfund website for the Landfill located at <https://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0101137>. DES maintains site records on its OneStop data retrieval system (<https://www4.des.state.nh.us/DESOnestop/BasicList.aspx>). The Landfill is identified on OneStop as site number 198803007 and master identification number 14549. The documents on file with DES and EPA and available electronically on their respective websites provide the record of remediation and approvals that govern the Landfill.

Return to:  
Nixon Peabody LLP  
900 Elm Street  
Manchester, NH 03101  
Attn: Mark E. Beaudoin, Esq.

## **NOTICE OF LAND LEASE OPTION AGREEMENT**

(PURSUANT TO NH RSA 477:7-a)

1. NAME AND ADDRESSES OF PARTIES:
  - a. Landlord. Town of Londonderry, a New Hampshire municipal corporation, with an address of 285B Mammoth Road, Londonderry, NH 03053.
  - b. Tenant. Superfund Solar, LLC a New Hampshire limited liability company, with an address of 848 Elm Street, Manchester, NH 03101.
2. DATE OF EXECUTION: The Land Lease Option Agreement (the "Lease") was executed on April \_\_\_\_\_, 2018 (the "Effective Date").
3. DESCRIPTION OF LEASED PREMISES: A description of the leased premises granted in the Lease is contained on Exhibit A attached hereto and made a part hereof, which leased premises is also commonly referred to as that certain parcel of real property, approximately two hundred (200) acres in size, located at 58 Old Derry Road (known as Parcel ID 0160230) in Londonderry, Rockingham County, New Hampshire, together with ingress, egress, and utility easements providing access to and from a public road and the point of utility interconnection.
4. TERM OF LEASE:
  - a. Option Period Term and Option Extension Period.
    - i. The term of the Lease Option Period is three (3) years commencing on the Effective Date and terminating on \_\_\_\_\_, 2021.
    - ii. The Lease grants the Tenant an option to extend the Option Period for one (1) additional year.

b. Lease Terms and Lease Renewal Terms.

- i. Primary Term. If Tenant exercises the option granted in the Lease, the term of the Lease commences on the date Tenant delivers the Option Notice (as defined in the Lease) to Landlord and expires on the date that is twenty-five (25) years after the Commercial Operations Date (as defined in the Lease).
- ii. Renewal Terms. The Lease grants the Tenant three (3) successive options to extend the Lease term for five (5) years each.
- iii. Final Term. Twelve (12) months commencing upon the expiration of the Primary Term or, if exercised, the applicable Renewal Term.

EXECUTED as of the \_\_\_\_ day of April, 2018.

**TENANT:**

SUPERFUND SOLAR LLC

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**STATE OF NEW HAMPSHIRE**  
**COUNTY OF \_\_\_\_\_**

Before me this \_\_\_\_ day of April, 2018 personally appeared \_\_\_\_\_, \_\_\_\_\_ of Superfund Solar LLC and such person acknowledged that he executed this instrument pursuant to due authority as a free act and deed and for the purpose therein contained on behalf of Superfund Solar LLC.

\_\_\_\_\_  
Notary Public/Justice of the Peace  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_





## EXHIBIT A

### Description of Leased Premises

A certain tract or parcel of land, with the buildings thereon, if any, situated in the Town of Londonderry, County of Rockingham, State of New Hampshire, being more particularly bounded and described as follows:

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# **ORDER #2018-07**

An Order Relative to

## ***EXPENDITURE OF MAINTENANCE TRUST FUNDS FOR VARIOUS PROJECTS***

---

Reading: 04/16/2018

Adopted: 04/16/2018

***WHEREAS*** voters since 2003 have approved funding for the maintenance and repair of public buildings and grounds in the town; and

***WHEREAS*** by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$4,627.00 from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

***NOW THEREFORE BE IT ORDERED*** by the Town Council of the Town of Londonderry that the Town Treasurer is hereby ordered to expend \$4,627.00, from the Expendable Maintenance Trust Fund for the aforementioned repairs and improvements.

---

John Farrell, Chairman  
Town Council

---

Sharon Farrell  
Town Clerk

***A TRUE COPY ATTEST:***  
04/16/2018

**Expendable Maintenance Trust TC Order Request  
for Town Council Meeting \*4/16/18\***

Description	Vendor	Amount
<u>Winter Maintenance - TH/PD/Library/Cable Access/Morrison House</u> Shoveling/Plowing/Treatment of parking lots, walkways, fire lanes at TH/PD/Library/Cable Access/Morrison House on 2/18, 3/13, 3/14, and 3/22/2018. This EMTF request is for the labor/materials for snow & ice treatment at our various town buildings.	Shady Hill - Invoice # P-373	\$ 640.00
	Shady Hill - Invoice # P-335	\$ 1,040.00
	Shady Hill - Invoice # P-360	\$ 1,675.00
		\$ 3,355.00
<u>Air Compressor - South Fire Station</u> The air compressor that supplies air to the Plymovent System (vehicle exhaust extractor), maintaining vehicle tire pressures at recommended PSI, and other miscellaneous tasks has been failing. After several attempts to make repairs to the 1999 air compressor, it was taken out of service due to safety concerns. This request is for the labor/materials to install a new 80 gallon air compressor.	Sanel - Invoice # 33GL8427	\$ 1,272.00
		\$ 1,272.00
<i>Total Town Council EMTF Order</i>		S 4,627.00

Shady Hill Greenhouses & Nursery LLC  
 One Adams Road  
 Londonderry, NH 03053

Invoice

Date	Invoice #
3/28/2018	P-373

<b>Bill To:</b>
Town of Londonderry 268B Mammoth Road Londonderry, NH

PO #	Terms
	Upon Receipt

Quantity	Description	Rate	Amount
2	Salt Town Hall Parking Lots 3/22, AM & PM	100.00	200.00
2	Salt Fire Access Road 3/22, AM & PM	55.00	110.00
1	Shovel Walkways & Ice Melt Town Hall 3/22, AM	255.00	255.00
1	Shovel Walkways & Ice Melt Library 3/22, AM	75.00	75.00
1	Salt Walkways Town Hall, Library & Access Center 3/25 - No Charge		

<b>Total</b>	640.00
<b>Payments/Credits</b>	
<b>Balance Due</b>	640.00

<b>Phone #</b> 603-434-2063
--------------------------------

<b>E-Mail</b> <a href="mailto:shadyhill@myfairpoint.net">shadyhill@myfairpoint.net</a>
---



**Shady Hill Greenhouses & Nursery LLC**

**Invoice**

One Adams Road

Londonderry, NH 03053

<b>Date</b>	<b>Invoice #</b>
2/20/2018	P-335

<b>Bill To:</b>
Town of Londonderry 268B Mammoth Road Londonderry, NH

<b>PO #</b>	<b>Terms</b>
	Upon Receipt

Quantity	Description	Rate	Amount
2	Plow/Salt Town Hall 2/18	185.00	370.00
2	Plow/Salt Walks & Fire Access Road 2/18	150.00	300.00
1	Plow/Salt Access Center 2/18	40.00	40.00
1	Shovel/Ice Melt Walkways Library 2/18	75.00	75.00
1	Shovel/Ice Melt Walkways Town Hall/PD 2/18	255.00	255.00

<b>Total</b>	1,040.00
--------------	----------

<b>Phone #</b>
603-434-2063

<b>E-Mail</b>
<a href="mailto:shadyhill@myfairpoint.net">shadyhill@myfairpoint.net</a>

<b>Payments/Credits</b>	
-------------------------	--

<b>Balance Due</b>	1,040.00
--------------------	----------

Shady Hill Greenhouses & Nursery LLC  
 One Adams Road  
 Londonderry, NH 03053

Invoice

Date	Invoice #
3/19/2018	P-360

<b>Bill To:</b>
Town of Londonderry 268B Mammoth Road Londonderry, NH

PO #	Terms
	Upon Receipt

Quantity	Description	Rate	Amount
5	Plow/Salt Town Hall Parking Lots 3/13-3/14	185.00	925.00
5	Plow/Salt Walks & Fire Access Road 3/13-3/14	150.00	750.00
2	Plow/Salt Access Center 3/13-3/14	N/C	

Total	1,675.00
Payments/Credits	
Balance Due	1,675.00

Phone # 603-434-2063
-------------------------

E-Mail <a href="mailto:shadyhill@myfairpoint.net">shadyhill@myfairpoint.net</a>
--



CUSTOMER NUMBER	Invoice NUMBER	Invoice DATE	PACKING SLIP	TERMS	WHSE
3358874	33GL8427	03/27/18	33XA5070001	2 % 10TH NET 24TH	033

**BILL TO:**  
**LONDONDERRY HWY DEPT**  
**268B MAMMOTH RD**  
**LONDONDERRY, NH 03053**

**SHIPPED TO:**  
**LONDONDERRY HWY DEPT**  
**268B MAMMOTH RD**  
**LONDONDERRY, NH 03053**

**REPRINT REQUIRED**  
**Dept: 001 LONDONDERRY HWY DEPT Contact: COTTON, LEIANN /603-434-3258**

YOUR P.O. NUMBER	ORDER DATE	CSR	SHIPPED VIA	CARTONS	OPER
STEVE COTTON	03/27/18, 08:11:52	330002	000001 Local 1	1	376

ITEM	DESCRIPTION	UNIT	ORDER QTY	BACK ORDERED	INV QTY	LIST PRICE	CORE PRICE	NET PRICE	NET CORE	EXT PRICE
BLC 8090250004	218V 5HP.80 GL COMPRESSOR	EA	0	0	1	2738.75	0.00	1272.00	0.00	1272.00
	TX: 001		1							
	Orig Order 33XA5070									

TOTAL PURCHASE	FREIGHT	TAX PCT	TAX AMT	INVOICE TOTAL	PAYMENTS	BALANCE DUE
1272.00	0.00		0.00	1272.00		<b>1272.00</b>

*3-28-18*  
*South Fire House*  
*Paul*

Since 1920, family owned and operated  
 Exactly what you need.  
 HD Call Center Experts: 800-258-3207

# RESOLUTION #2018-03

## A Resolution Relative to Amending the Policies Governing the Undesignated Fund Balance

---

First Reading: 04/16/18  
Second Reading: Waived  
Adopted: 04/16/18

**WHEREAS** the Town of Londonderry established a policy governing the use and retention of its Fund Balance in 2002 and revised said policy in 2003; and

**WHEREAS** inclusive in the formula used for the Town's Fund Balance retention policy are the net school district appropriations; and

**WHEREAS** in 2016 the Londonderry School District began retaining its own fund balance as allowed and prescribed by New Hampshire state statute; and

**WHEREAS** the Town of Londonderry discovered a tax revenue shortfall of approximately \$607,000 for tax year 2017/fiscal year 2018; and

**WHEREAS** the Londonderry School District, by a vote of 4-1 on April 3<sup>rd</sup>, 2018, voted again contributing monies from their Fund Balance toward the \$607,000 revenue shortfall.

**NOW THEREFORE BE IT RESOLVED** that the Londonderry Town Council hereby amends Title VI, Chapter XVII, Section XI of the Town Municipal Code; the policies governing the retention of the Town's Fund Balance, such that the net school district appropriations shall no longer be included in the formula that sets the Town's Fund Balance retention amount.

---

John Farrell - Chairman  
Town Council

---

Sherry Farrell - Town Clerk

(TOWN SEAL)

**A TRUE COPY ATTEST:**  
**04/16/18**

## **SECTION XI BUDGET GUIDELINES (Cont'd)**

D. To provide for emergencies, working cash and as a safeguard against fluctuating revenues, adopted budgets for General Operating and other funds shall include consideration of the following provisions: (Formerly Fund Balance Policy, Title VI, Chapter III)

### **1. Definitions:**

a. Fund Balance: - The accumulated equity balance in a governmental fund resulting from operations over the years. This is the difference between fund assets and fund liabilities.

b. General Fund - A fund used to account for basic governmental services supported generally by taxes. Accounts for all financial resources not required to be accounted for in another fund.

c. Undesignated Fund Balance of the General Fund - Defined as the fund balance of the general fund, excluding any and all reserves, and any dedicated fund balances of the General Fund.

### **2. Recommended Maintenance Level**

a. Not less than 5% and not higher than 7% of the gross municipal appropriations, ~~plus net school district appropriations~~, as approved for a fiscal year.

b. Exclusions: Any appropriations for capital projects or improvements funded entirely by bonds/notes proceeds, operating transfers or other financing sources.

c. If the balance falls below the prescribed level, any additions to the fund balance, as determined by the annual audit, must remain in the fund until the prescribed level has been reached.

### **3. Recommended Utilization**

- a. Excess Balance (over prescribed level)
- b. Emergency appropriations
- c. Capital Projects
- d. Transfers to Capital Reserves
- e. Reduction of the tax rate for the ensuing year
- f. Any other nonrecurring appropriation as deemed appropriate by the Council

# RESOLUTION 2018-04

A resolution relative to

## The Process for Conservation Land Acquisitions

---

Reading: 4/16/18  
Adopted: 4/16/18

*WHEREAS* Town voters have invested in the acquisition of conservation land to preserve the character and aesthetics of the community; and

*WHEREAS* The Town Council believes that the process by which conservation land is acquired should be further streamlined to insure continued public confidence in the process especially with regard to purchase price of said land.

*NOW, THEREFORE, BE IT RESOLVED* by the Londonderry Town Council that future conservation land acquisitions shall be governed by the process set forth herein, and that Resolution 2011-16 is rescinded and shall be of no further force or effect.

---

John W. Farrell, Jr.  
Chairman, Town Council

A TRUE COPY ATTEST:

---

Sherry Farrell  
Town Clerk



## **Conservation Land Acquisition Process**

The Londonderry Town Council agrees to adopt the following procedures governing the purchase of interests in land by the Town for conservation purposes. The goals of these procedures are to maximize transparency, to encourage economic advantage, and to avoid conflicts of interest in accordance with the Town Purchasing Policy.

### **A. Site Identification and Evaluation Process:**

1. The Conservation Commission or its designee (the "Commission") is empowered to receive potential sellers' written offers and statements of intent for the sale of conservation land and interests therein ("Offers") to the Town of Londonderry.
2. Upon receipt of an Offer, the Commission shall meet in non-public session to evaluate the suitability of the Offer, and to conduct or cause to be conducted preliminary due diligence with regard to same.
3. If an Offer passes preliminary suitability review, the Commission shall refer the matter to the Planning and Economic Development (P&ED) staff, which shall prepare a preliminary report to include the staff's projection of the development capacity of the property, and any other topic or inquiry the Commission may request. The Commission shall also conduct an appraisal on the property in accordance with the Guidelines for Appraisal Selection set forth below.
4. Following evaluation of the P&ED staff's report and the appraisal, provided the Commission determines the purchase remains desirable, the Commission shall refer the matter to the Town Council ("Council").

### **B. Procedure After Site Identification and Evaluation Process:**

1. After referral from the Commission, the Council shall discuss the acquisition in nonpublic session. Provided the Council concurs with the Commission that the acquisition is desirable, the Council or its designee shall negotiate a purchase and sale agreement with the seller, which shall in all cases be expressly contingent upon the approval of the Commission and Council after public hearing.
2. Once a purchase and sale agreement has been negotiated, the Commission shall hold a public hearing on the approval or disapproval of the purchase and sale agreement. If approved, the matter shall return to the Council, which shall hold a public hearing on the approval or disapproval of the purchase and sale agreement.

**C. Guidelines for Appraisal Selection:**

1. The P&ED Staff shall maintain a list of licensed and certified appraisers from which it may choose to hire. It will be in the P&ED Staff's sole discretion to add or remove appraisers from the authorized list.
2. Appraisers may be subject to an open competitive bidding process for any assignment under this Memorandum. The lowest qualified bidder shall be strongly considered for each assignment.

**D. General Provisions:**

1. A purchase and sale agreement may set a time period within which a seller must accept the Town's offer, failing which such offer shall expire.
2. As part of all public officials' duties and obligations in accordance with the Town's Conflict of Interest Ordinance and Purchasing Policy, at the public hearings of the Commission and Council, members thereof shall state, on the record, that neither they nor their immediate family have any financial interest in the transaction.
3. Nothing in this agreement is intended to contravene existing state statutes or the Municipal Code. In the event of a conflict, the statute and/or code shall prevail.

# RESOLUTION #2018-05

A Resolution Relative to the  
**SANCTIONING OF THE LONDONDERRY SOCCER CLUB**

---

First Reading: 04/16/18  
Second Reading: Waived  
Adopted: 04/16/18

**WHEREAS** there is a need to sanction town athletic organizations in order to better manage town recreation facilities; and

**WHEREAS** the Town Council adopted Title I, Chapter XXVIII, Approval of Sanctioned Recreation Groups, which established a process by which groups may be sanctioned; and

**WHEREAS** The Londonderry Youth Soccer Association (LYSA) and the Londonderry United Soccer Club (LUSC) wishes to combine into one organization known as Londonderry Soccer Club (LSC); and further has been organized to provide recreational and travel level soccer; and

**WHEREAS** the Recreation Commission has been reviewing applications in accordance with the aforementioned Town Ordinance;

**NOW THEREFORE BE IT RESOLVED** by the Londonderry Town Council that the Londonderry Soccer Club, having met the requirements of Title I, Chapter XXVIII of the municipal code, and receiving the positive recommendation of the Recreation Commission, is hereby sanctioned until December 31, 2021.

---

John Farrell - Chairman  
Town Council

---

Sherry Farrell - Town Clerk

(TOWN SEAL)

**A TRUE COPY ATTEST:**  
**04/16/18**

Introduced/1<sup>st</sup> Reading: 04/16/18  
Second Read/Public Hrg.: 05/07/18  
Adopted: \_\_\_\_\_

**ORDINANCE 2018-02**  
***AN AMENDMENT TO THE MUNICIPAL CODE, TITLE I, CHAPTER***  
***XXVIII, RELATING TO THE APPROVAL OF***  
***SANCTIONED RECREATION GROUPS***

---

***WHEREAS*** the Town of Londonderry owns and manages many recreation facilities; and,

***WHEREAS*** the Londonderry Recreation Commission does not directly manage many recreation programs and consequently receives numerous requests from youth and adult groups to utilize Town recreation facilities; and,

***WHEREAS*** a policy is necessary to ensure that facilities are utilized in a safe and efficient manner;

***NOW THEREFORE BE IT ORDAINED*** by the Town Council of the Town of Londonderry that the Municipal Code of the Town of Londonderry, Title I, Chapter XXVIII, Approval of Sanctioned Recreation Groups, is hereby adopted as attached herein.

\_\_\_\_\_  
John W. Farrell, Jr. - Chairman  
Town Council

\_\_\_\_\_  
Sherry Farrell  
Town Clerk

(TOWN SEAL)

***A TRUE COPY ATTEST:***

**Chapter XXVIII - APPROVAL OF SANCTIONED RECREATION GROUPS**

**SECTION I PURPOSE**

- A. The Town of Londonderry owns and manages many recreational facilities, however, the Town does not operate many recreation programs. Youth and Adult programs are organized and managed by various non-profit groups. To ensure that town facilities are utilized in a safe manner for the benefit of town residents, the Town Council has adopted the following guidelines when recognizing Sanctioned groups.

**SECTION II AUTHORITY**

- A. This policy is authorized under Article 3, Section 3.12 of the Town of Londonderry Charter.

**SECTION III APPLICATION**

- A. All groups looking to be sanctioned must apply with the Recreation Commission. All applications and recommendations of the Committee will be forwarded to the Town Council for consideration.
- B. Recognition by the Recreation Commission does not guarantee exclusivity to times or locations of any facility.
- C. Upon approval of an Sanctioned Group by the Town Council, that Group is eligible to utilize town recreation facilities pursuant to the use and scheduling policies and practices as promulgated by the Recreation Commission.

**SECTION IV ELIGIBILITY CRITERIA**

- A. In order to be considered eligible for approval as an Sanctioned Recreation Group, the following guidelines shall be met:

- ~~1. A minimum of 60% of the participation are residents of Londonderry and the program is available to all age appropriate Londonderry residents. The participation ratio applies to all teams within an organization with exception to adult recreation teams whose participation ratio applies to the organization. If any team within an organization is unable to meet the 60% criteria the organization may petition the Commission for a waiver to this rule.~~



**A minimum of 60% of the participants are residents of Londonderry and all programs will be available to all age-appropriate Londonderry residents. The participation ratio applies to all players that play within the organization.**

2. A majority of the coaches/supervisors are residents of Londonderry.
3. The governing body consists of Londonderry residents
4. In recognition of the limited availability of facilities and the desire to avoid scheduling conflicts, all groups must demonstrate that the program offering is new or unique to the Town, and if not, justification for starting a similar program.
5. All groups must demonstrate that the program is not temporary, but is designed to continue to provide recreational opportunities for an indefinite period.
6. All groups must demonstrate that the program has been well planned and will be properly supervised, as set forth in the group's Articles of Agreement (if a fund-raising group), By-Laws and Code of Conduct. The charters of each organization should clearly reflect the goals of the group and should mirror the charter granted by the Town Council. Each organization must adhere to the guidelines of the resolutions approved by the town council.
7. All groups must demonstrate that they have the proper framework for leadership, and that the coaches/supervisors will provide this leadership.
8. All groups must demonstrate that the group is non-profit and does not have any outstanding obligations to the Town and has the ability to financially support the group's activities.
9. All Sanctioned groups must comply with all the rules set forth by the Recreation Commission regarding the usage of facilities. No changes can be made to the use of fields without the prior approval of the Recreation Commission.
10. The facilities exist to accommodate the new activity.
11. Once sanctioned, all groups must comply with all of the rules set forth within this eligibility criteria section.

**~~12. Sanctioned groups may not enter into any contracts with, or give permission to, any other unsanctioned group for use any of the fields. All field use will be arranged through the recreation commission to sanctioned groups only.~~**

**Sanctioned groups may enter into non-financial partnerships with other outside groups for use of the facilities in order to better promote their sport and improve the quality of the development of the Londonderry players. "Non-financial partnership" means that neither organization directly or indirectly receives monetary compensation from the other organization for any purpose. All facility**



**use and partnerships will be arranged and managed by the town sanctioned organization, with approval from the Recreation Commission.**

- B. Fund-Raising Groups – In addition to meeting the Eligibility Requirements as set forth in Section IV. A, Recreational Groups which seek donations and/or financial assistance to support their activities shall be required to meet the following requirements:
1. Any fund-raising recreational group has been registered as a Volunteer Corporation with the New Hampshire Secretary of State, in accordance with RSA 292, and remains in good standing.
  2. Once sanctioned by the Town Council, all Fund-Raising Groups must maintain the following documents with the Commission (documents must be current to demonstrate a group's good standing with the appropriate agencies):
    - Articles of Agreement
    - By-Laws
    - Code of Conduct
    - IRS Filings (if applicable)
    - State of New Hampshire Filings with Secretary of State and/or Attorney General's Office, Charitable Trust Division
    - Current board of directors with contact information (title, name, address, phone number and e-mail)
      - Proof of Insurance
      - Membership/enrollment total broken down by town
- C. Other Independent Groups - Once sanctioned by the Town Council, all non-fund raising, independent groups must maintain the following documents with the Commission (documents must be current to demonstrate a group's good standing with the appropriate agencies):
- By-Laws
  - Code of Conduct
  - IRS Filings (if applicable)
  - State of New Hampshire Filings with Secretary of State and/or Attorney General's Office, Charitable Trust Division (if applicable)
  - Current board of directors with contact information (title, name, address, phone number and e-mail)
    - Proof of Insurance
    - Membership/enrollment total broken down by town
- D. Exemptions to the Sanctioning Process – It is hereby recognized that the Recreation Commission may organize, sponsor and/or coordinate a number of recreational activities, with said activities not falling within the definition of Section IV. B or C. These activities shall be exempt from the Sanctioning process. Examples, for illustrative purposes only, may include:

- Youth Camps
- Skills Training
- Coaches' Training
- Open pick up type adult activities (e.g.. free play basketball, coed volleyball, line dancing, ballroom dancing)

E. Effective Date shall be immediate upon the adoption date.

*~~End of Chapter~~*

# LONDONDERRY TOWN COUNCIL MEETING MINUTES

---

1 April 2, 2018

2  
3 The Town Council meeting was held in the Moose Hill Council Chambers, Town Hall,  
4 268B Mammoth Road, Londonderry, NH.  
5

6 Present: Chairman John Farrell; Vice-Chairman Joe Green; Councilors Tom Dolan & Ted  
7 Combes; Town Manager Kevin Smith; Assistant Town Manager Lisa Drabik; Executive  
8 Assistant Kirby Brown; Absent; Councilor Jim Butler  
9

## 10 CALL TO ORDER

11  
12 Chairman Farrell called the Town Council special meeting to order. Councilor Combes led  
13 the Pledge of Allegiance. This was followed by a moment of silence for those who serve  
14 us both here and abroad.  
15

## 16 PUBLIC COMMENT

17  
18 Chairman Farrell informed the Council that the new Chair for the School Board contacted  
19 him to tell him that on the agenda for the School Board they will be discussing the tax  
20 shortfall that we had and the current number the School Board had discussed was \$220,000.  
21 The next item they brought up was the open letter from Bob Slater asking if the town would  
22 have the option to build a building for the school administrative department. Chairman  
23 Farrell stated that the Council had gotten a number from Steve Cotton somewhere between  
24 2.2 and 2.4 million to take down the building that is there now and build a new two story  
25 building. Mr. Slater is the owner of a concrete business and is actively involved in it and  
26 wants to be involved in the project. Chairman Farrell stated that he was asked if it was  
27 something that they Council would entertain. Chairman Farrell stated that in theory it is  
28 possible to do it under the Undesignated Fund Balance with the approval of the voters if  
29 we have the balance to be able to cover it. The School District has signed a lease to move  
30 up to Kitty Hawk Landing but they will be discussing it at their next meeting because they  
31 would prefer not to move to the other end of town and leave the campus.  
32

33 Chairman Farrell invited up Fire Chief Darren O'Brien to discuss the Safer Grant. Chief  
34 O'Brien thanked the public for their vote on March 13<sup>th</sup> for the renovations to Central Fire  
35 Station. Safer stands for 'safe and adequate fire emergency response'. The Grant allows  
36 communities to apply for staffing. Chief O'Brien showed the Council the breakdown of four

## LONDONDERRY TOWN COUNCIL MEETING MINUTES

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37 firefighters. Chairman Farrell stated to Chief O'Brien that he has the support of the Council.

38  
39 Chairman Farrell invited up Police Chief Bill Hart. Chief Hart stated that Londonderry  
40 Police Department will be partaking in the Annual 60 seconds running of the blue lights in  
41 support of World Autism Day. Chief Hart presented and congratulated Dr. Sgt. Mike  
42 McCutcheon on earning his PhD on May 12<sup>th</sup>. One of only four that Chief Hart is aware of  
43 that has received their PhD while serving as an officer. Sgt. McCutcheon thanked the  
44 Council for their support and the tuition reimbursement program Londonderry offers.

### **PUBLIC HEARING**

45  
46  
47  
48 Motion to open public hearing made by Councilor Dolan and second by Vice Chairman  
49 Green. Chair votes 4-0-0.

50  
51 Chairman Farrell invited up Drew Caron with the Cable Department and Bill August who  
52 represents the Town with Comcast. August presented the Comcast Cable License renewal.  
53 Brian Christenson with Comcast was present as well. Town manager Smith stated that 50  
54 people at any one time can get Wi-Fi at the Town Common. The Council discussed the  
55 contract in detail to make sure everything was covered. Motion to approve the new Comcast  
56 Contract made by Councilor Dolan and second by Councilor Combes. Chair votes 4-0-0.  
57 Council signed the agreement.

58  
59 Motion to close the public hearing made by Councilor Dolan and second by Vice Chairman  
60 Green. Chair votes 4-0-0.

### **OLD BUSINESS**

61  
62  
63  
64 Chairman Farrell tabled the Town Council public comment rules until the 4/16 meeting.

### **NEW BUSINESS**

65  
66  
67  
68 Chairman Farrell introduced Resolution #2018-02, A Resolution relative to the Adoption of  
69 Post-Issue Tax Compliance Policies and Procedures. Doug Smith presented. Mr. Smith gave  
70 a quick background on the procedures and explained that, with Town Council approval, he  
71 would be the finance director of said procedures. Mr. Smith mentioned that this policy will  
72 be a stand alone policy but there is intent to implement it into the debt management policy

## LONDONDERRY TOWN COUNCIL MEETING MINUTES

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73 under municipal code. Motion to approve made by Councilor Tom Dolan and second by  
74 Councilor Ted Combes. Chair votes 4-0-0.

75  
76 Chairman Farrell introduced Ordinance #2018-01, An Amendment to the Municipal Code  
77 Title III, Land Use Codes, Chapter IV Conservation Areas, Relating to Kendall Pond  
78 Parking Lots (1<sup>st</sup> Reading). Assistant Town Manager Lisa Drabik presented. Chairman  
79 Farrell suggested that first reading be waived, public hearing will be at the next meeting on  
80 April 16, 2018. Vice Chairman Joe Green motioned to waive the first reading. Chairman  
81 Dolan second. Chair votes 4-0-0.

82  
83 Chairman Farrell opened a discussion on Land Acquisition Process as he felt there was some  
84 confusion. Town Manager Kevin Smith explained that he spoke with the town attorney and  
85 provided Chairman Farrell with his recommendations. Chairman Farrell shared the 3 simple  
86 steps to change the resolution.

- 87 1. The Conservation Commission will identify land it seeks to purchase.
- 88 2. The Conservation Commission will identify sources for the funds used to purchase  
89 the land.
- 90 3. TC (or designated person) shall negotiate financial terms for the purchase.

91 Chairman Dolan suggested that there is a flow chart to show the steps involved, so that  
92 everyone is clear as to how the process is completed.

93

### 94 **APPROVAL OF MINUTES**

95

96 Motion to Approve Town Council minutes from March 26, 2018 made by Vice Chairman  
97 Green and seconded by Councilor Dolan. Chair votes 4-0-0.

98

### 99 **TOWN MANAGER REPORT**

100

101 New Town Moderator, Tom Freda, is up and running. He has added a link with answers to  
102 commonly asked election questions. On town website: Boards and Commissions; Town  
103 Moderator; FAQ's for more.

104

105 Chairman Dolan made a point that it's time for dog license registration. With the amount of  
106 lost dogs, he wanted to make sure dogs in town are registered. Town Clerk, Sherry Farrell  
107 called in to affirm that they are diligent with dog registrations and this year their goal is for  
108 less than 1% of dogs in town to be unaccounted for.

# LONDONDERRY TOWN COUNCIL MEETING MINUTES

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109

110

## ASSISTANT TOWN MANAGER REPORT

111

112

None.

113

114

## ADJOURNMENT

115

116 Motion to adjourn made by Vice Chairman Green and second by Councilor Combes.

117 Chair votes 4-0-0. Meeting adjourned at 8:33 PM.

118

119 Notes and Tapes by: Kirby Brown Date: 04/0/2018

120 Minutes Typed by: Kirby Brown/Stacie Street Date: 04/09/2018

121 Approved by: Town Council Date: 04/16/2018



# RESOLUTION 2018-02

## A Resolution Relative to the Adoption of Post-Issue Tax Compliance Policies & Procedures

First Reading: 04/02/18  
Second Reading: Waived  
Adopted: 04/02/18

**WHEREAS** the Town of Londonderry, New Hampshire (the "Town") from time to time, on a tax-exempt basis, issues (i) bonds and bond anticipation notes to finance capital projects, (ii) tax anticipation notes to pay the Town's maintenance and operation expenses and (iii) municipal leases to finance the lease-purchase of certain equipment, all pursuant to the provisions of New Hampshire RSA Chapter 33, as amended;

**WHEREAS** the federal income tax laws included in the Internal Revenue Code of 1986, as amended (the "Code), require that issuers of tax-exempt debt comply with certain post-issuance requirements set forth in the Code;


**WHEREAS** for purposes of maximizing the likelihood that the Town complies with such requirements of the Code, the Town Council of the Town (the "Council") desires to adopt the Post-Issuance Tax Compliance Policies and Procedures, attached hereto as Exhibit A;

**NOW THEREFORE BE IT RESOLVED** by the Londonderry Town Council that:

The Post-Issuance Tax Compliance Policies and Procedures, attached hereto as Exhibit A are hereby approved.

That the Council hereby names the Finance Director as the "Coordinator" under the Post-Issuance Tax Compliance Policies and Procedures and that the Finance Director has accepted such nomination.

That this resolution shall take effect from and after its adoption.

  
\_\_\_\_\_  
John Farrell - Chairman  
Town Council

(TOWN SEAL)

  
\_\_\_\_\_  
Sharon Farrell - Town Clerk



# RESOLUTION 2018-02

## A Resolution Relative to the Adoption of Post-Issue Tax Compliance Policies & Procedures

First Reading: 04/02/18  
Second Reading: Waived  
Adopted: 04/02/18

**WHEREAS** the Town of Londonderry, New Hampshire (the "Town") from time to time, on a tax-exempt basis, issues (i) bonds and bond anticipation notes to finance capital projects, (ii) tax anticipation notes to pay the Town's maintenance and operation expenses and (iii) municipal leases to finance the lease-purchase of certain equipment, all pursuant to the provisions of New Hampshire RSA Chapter 33, as amended;

**WHEREAS** the federal income tax laws included in the Internal Revenue Code of 1986, as amended (the "Code"), require that issuers of tax-exempt debt comply with certain post-issuance requirements set forth in the Code;


**WHEREAS** for purposes of maximizing the likelihood that the Town complies with such requirements of the Code, the Town Council of the Town (the "Council") desires to adopt the Post-Issuance Tax Compliance Policies and Procedures, attached hereto as Exhibit A;

**NOW THEREFORE BE IT RESOLVED** by the Londonderry Town Council that:

The Post-Issuance Tax Compliance Policies and Procedures, attached hereto as Exhibit A are hereby approved.

That the Council hereby names the Finance Director as the "Coordinator" under the Post-Issuance Tax Compliance Policies and Procedures and that the Finance Director has accepted such nomination.

That this resolution shall take effect from and after its adoption.

  
\_\_\_\_\_  
John Farrell - Chairman  
Town Council

(TOWN SEAL)

  
\_\_\_\_\_  
Sharon Farrell - Town Clerk

