

**WESTPORT BOARD OF EDUCATION**

**AGENDA \***

(Agenda Subject to Modification in Accordance with Law)

**PUBLIC SESSION//PLEDGE OF ALLEGIANCE**

7:30 p.m., Staples High School, Cafeteria B (Room 301)

**ANNOUNCEMENTS FROM BOARD AND ADMINISTRATION**

**PUBLIC QUESTIONS/COMMENTS ON NON-AGENDA ITEMS (15 MINUTES)**

**MINUTES:** February 24, 2020, *page 1*

**DISCUSSION/ACTION**

1. Virtual Net Metering Contract (Encl.) Mr. David Mann
  - A. Solar Contracts, *pages 3-74*
  - B. Additional Solar Power Service Agreements, *pages 75-113*

**DISCUSSION**

1. Update on Policy Committee and First Reading of the Following Policies and Regulations: (Encl.) Ms. Karen Kleine
  - Policy 6146 Graduation Requirements (revised), *pages 115-126*
  - Policy 5145.14, On-Campus Recruitment (revised), *pages 127-128*
  - Policy 4112.6, Personnel Records (new), *pages 129-130*
  - Policy 4116, Probationary/Tenure Status (revised), *pages 131-132*
  - Regulation 4118.7, Study/Use of Religious Symbols, Music and Decorations, etc. (revised), *pages 133-135*
  - Policy 4118.121 Freedom of Speech (new), *page 137*
  - Policy 4117.6, Evaluation – Coaches (revised), *pages 139-141*
  - Policy 5112.4 Disenrollment/Enrollment (new), *pages 143-144*
  - Policy 5141.6 Crisis Management (new), *pages 145-146*

**ADJOURNMENT**

\* A 2/3 vote is required to go to executive session, to add a topic to the agenda of a regular meeting, or to start a new topic after 10:30 p.m. The meeting can also be viewed on Cablevision on channel 78; Frontier channel 6021 and by video stream @www.westportps.org

**PUBLIC PARTICIPATION WELCOME USING THE FOLLOWING GUIDELINES:**

- Comment on non-agenda topics will occur during the first 15 minutes *except* when staff or guest presentations are scheduled.
- Board will not engage in dialogue on non-agenda items.
- Public may speak as agenda topics come up for discussion or information.
- Speakers on non-agenda items are limited to 2 minutes each, except by prior arrangement with chair.
- Speakers on agenda items are limited to 3 minutes each, except by prior arrangement with chair.
- Speakers must give name and use microphone.
- Responses to questions may be deferred if answers not immediately available.
- Public comment is normally not invited for topics listed for action after having been publicly discussed at one or more meetings.



**WESTPORT BOARD OF EDUCATION**

**Board Members Present:**

Candice Savin            Chair  
Jeannie Smith        Vice Chair  
Elaine Whitney       Secretary  
Karen Kleine  
Vik Muktavaram\*  
Youn Su Chao  
Lee Goldstein

**Administrators Present:**

David Abbey            Interim Superintendent  
Anthony Buono        Asst. Superintendent, Teaching and Learning  
Elio Longo             Chief Financial Officer  
John Bayers            Director of Human Resources and General Admin.

\*Arrived at 7:40 p.m.

**Administrators Absent:**

Tina Mannarino, Assistant Superintendent, Pupil Personnel Services  
Ann Leffert, Interim Director, Pupil Personnel Services

**PUBLIC SESSION//PLEDGE OF ALLEGIANCE:** 7:32 p.m., Staples High School, Room 1025c

**ANNOUNCEMENTS FROM BOARD AND ADMINISTRATION**

**PUBLIC QUESTIONS/COMMENTS ON NON-AGENDA ITEMS**

**MINUTES:** February 10, 2020

Elaine Whitney moved to approve the minutes of February 10, 2020; seconded by Jeannie Smith and passed unanimously.

**DISCUSSION:**

FY 2020 Second Quarter Financial Report

Superintendent Search Update

**ADJOURNMENT:** Vik Muktavaram moved to adjourn at 8:27.; seconded by Jeannie Smith and passed unanimously.

Respectfully submitted,

Elaine Whitney, Secretary, Board of Education  
(Minutes written by Lisa Marriott)



**SOLAR POWER SERVICES AGREEMENT**

**Dated as of**

**March \_\_\_\_, 2020**

**between**

**THE TOWN OF WESTPORT, CONNECTICUT**

**and**

**PLAINFIELD SOLAR LLC**

## SOLAR POWER SERVICES AGREEMENT

This Solar Power Services Agreement (“**Agreement**”) is entered into as of March \_\_\_\_, 2020 (the “Effective Date”), by and between Plainfield Solar LLC, a Connecticut limited liability company, together with any successors and permitted assigns (“Provider”), and Town of Westport, a Connecticut municipality, together with any successors and permitted assigns (“Purchaser”, and, together with Provider, each, a “Party” and together, the “Parties”).

**WHEREAS**, Provider is the lessee of the real property comprising the Premises (as described on Schedule 1 hereto), and desires to use a portion of such property for the construction, operation and maintenance of a solar powered electric generating system, and to sell the electric energy produced by the system to the Purchaser; and

**WHEREAS**, Allco Finance Limited (“Parent”) intends to fully fund Provider’s obligations hereunder to develop, design, construct, and install the solar powered electric generating system and to guarantee the obligations of Provider in accordance with the Parent Guaranty in the form of Exhibit A hereto.

**WHEREAS**, Purchaser desires to obtain Virtual Net Metering Credits and Excess Credits available from the output of the Provider’s solar powered electric generating system; and

**NOW, THEREFORE**, in consideration of the promises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### 1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Production” means the amount of energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.

“Affiliate” or “Affiliates” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” means this Solar Power Services Agreement.

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

“Assignment” has the meaning set forth in Section 13.1.

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

(a) such Party has (i) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (ii) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (iii) made a general assignment for the benefit of its creditors; (iv) commenced a voluntary case under any bankruptcy law; (v)

filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (vi) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (vii) taken any corporate or other action for the purpose of effecting any of the foregoing; or

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

“Billing Cycle” means the monthly billing cycle established by the Local Electric Utility.

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

“Capacity Benefits” means the amount of capacity that is attributable to the physical generating capacity of Provider’s System which may (i) count toward the New England Independent System Operator’s (NE-ISO) installed capacity market or the capacity market of any other independent system operator located in the United States or (ii) provide expense or cost reduction to the LEU from NE-ISO.

“Commercial Operation” and “Commercial Operation Date” have the meaning set forth in Section 3.3(b).

“Confidential Information” has the meaning set forth in Section 15.1.

“Default” shall mean either a Provider Default or a Purchaser Default.

“Dispute” has the meaning provided in Section 17.1.

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

“Environmental Attributes” excludes electric energy and capacity produced but includes, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products and shall specifically include any Zero Emission Renewable Energy Certificates or Low Emission Renewable Energy Certificates generated by the production of the System as well as any other emissions, air quality, or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the generation of energy by a low emissions or zero emissions renewable energy facility as defined in the Energy Act, whether existing as of the Effective Date or in the future, and whether as a result of any present or future Applicable Law or national or international voluntary program, as well as any and all generation attributes under the Connecticut RPS regulations and under any Applicable Law or program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future; and further, means: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the System’s generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the NEPOOL GIS in connection with energy generated by the System; and (c) any voluntary emission reduction credits obtained or obtainable by Provider in connection with the generation of energy by the System. If during the Term, a change in laws or regulations occurs that creates value in Environmental Attributes, then at Provider’s request, Purchaser shall cooperate with Provider to register such Environmental Attributes or take other action necessary to obtain the value of such Environmental Attributes for Purchaser.

"Estimated Remaining Payments" means as of any date, the estimated remaining Payments to be made through the end of the then-applicable Term as set forth on Schedule 2 hereto.

"Estimated Annual Production" has the meaning set forth in Section 5.3.

"Excess Metering Credit" shall mean the monetary value of the excess electricity generated by the Solar Electric Generating Equipment, and credited to the Purchaser by the Local Electric Utility for any period of time in any year after the Purchaser has reached the VNM Annual Credit Cap.

"Expiration Date" means the date on which the Agreement terminates by reason of expiration of the Term.

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

"Force Majeure Event" has the meaning set forth in Section 10.1.

"Guaranteed Annual Output" means 80% of the Estimated Annual Production as confirmed by an independent engineer approved by the Financing Party, such amount to be subject to 0.5% annual degradation measured on a rolling, three-year basis beginning on the Commercial Operation Date.

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

"Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"Initial Term" has the meaning set forth in Section 2.1 for the time period specified in Schedule 7 hereto.

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

"Invoice Date" has the meaning set forth in Section 6.2.

"Hazardous Material" means a substance or material that the Connecticut Department Energy and Environmental Protection, the United States Environmental Protection Agency, or the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous, toxic, dangerous, or otherwise poses a threat to human health or the environment under any state or federal Law.

"kWh Rate" means (a) for the Initial Term, the price per kWh set forth in Schedule 3 hereto and (b) for the Renewal Term, the rate as provided pursuant to Section 2.1 hereof.

"Lease" means the Land Lease Agreement, dated as of May 1, 2019, entered into between Provider and PLH, LLC.

"LEU Retail Rate" means the average applicable all-inclusive rate (expressed on a \$/kWh basis) charged by the Local Electric Utility in any contract year for electricity that is delivered to Purchaser's municipal accounts, and shall include, without limitation, all basic service or competitive supplier commodity charges, transmission, transition, distribution and other delivery charges, demand charges, customer charges, ancillary service charges, renewable energy, energy efficiency, taxes, and other fees and charges in place.



"Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services at the Premises.

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

"Material Adverse Change" means any event, circumstance, fact, change, development, condition or effect that either individually or in the aggregate, has, had or could reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Purchaser or Provider (as applicable).

"Net Energy Metering" means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a solar system and fed back to the Local Electric Utility, as set forth in the Net Metering Rules.

"Net Energy Meter" has the meaning set forth in Section 4.2.

"Net Metered Production" means the amount of energy delivered to the Local Electric Utility generated by the System.

"Net Metering Rules" means, collectively, and as amended from time to time, the State of Connecticut General Statutes Section 16-244u as amended by Public Act No. 13-298, Sections 35 and Public Act 13-247 Section 119; General Statutes 16-1 and 16-243y; the Regulations of Connecticut State Agencies Sections 16-11-100 through 16-11-238; as well as any statutes or regulations relevant to virtual net metering that are later amended, enacted or adopted and further subject to the virtual net metering policies adopted by Public Utilities Regulatory Authority (PURA) in its Final Decision dated December 17, 2014 Docket No. 13-08-14RE01, PURA Development of the Administrative Processes and Program Specifications for Virtual Net Metering – VNM Methodology, and any Connecticut net metering regulations related thereto, orders issued by the PURA, and the associated net metering tariff of the Local Electric Utility.

"Party" or "Parties" has the meaning set forth in the preamble to this Agreement.

"Payment" has the meaning set forth in Section 6.1.

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

"Premises" means the premises described in Schedule 1 hereto. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 hereto.

"Production Shortfall" means the amount, expressed in kWh, by which the Net Metered Production generated by the System in any particular period is less than the Guaranteed Annual Output for that period.

"Provider" has the meaning set forth in the preamble to this Agreement.

"Provider Default" has the meaning set forth in Section 11.1(a).

"Purchaser Default" has the meaning set forth in Section 11.2(a).

"Renewal Term" has the meaning set forth in Section 2.1.

"Representative" has the meaning set forth in Section 15.1.

"Security Agreement" has the meaning set forth in Section 8.2.

"Solar Incentives" means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 hereto and all other solar or renewable energy subsidies and incentives.

"Solar Power Services Agreement" means this Solar Power Services Agreement (including the Schedules and Exhibits attached hereto).

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

"System" or "Solar Electric Generating Equipment" means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 hereto that generates electricity.

"System Operations" means the Provider's operation, maintenance and repair of the System performed in accordance with the requirements contained herein.

"Term" has the meaning set forth in Section 2.1.

"Virtual Net Metering Credit Rate" shall mean the monetary value of the electricity generated by the System in excess of on-site use, as set forth in the Net Metering Rules, and credited to the Purchaser by the Local Electric Utility.

"Virtual Net Metering Service Agreement" shall mean that certain Virtual Net Metering Service Agreement between the Town of Westport and Connecticut Light & Power Company d/b/a Eversource Energy dated October 18, 2019 attached hereto as Exhibit B.

"VNM Annual Credit Cap" shall mean \$270,909.00 or as otherwise set forth on the Virtual Net Metering Services Agreement.

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

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for the number of years from the Commercial Operation Date specified in Schedule 7 hereto for the Initial Term, unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed for an additional five (5) year term (the "Renewal Term"). At least one hundred and eighty (180) days, but no more than three hundred and sixty five (365) days, prior to the expiration of the Initial Term, Provider shall give written notice to Purchaser of the availability of the Renewal Term, including the kWh Rate that would be applicable during the Renewal Term. Purchaser shall have ninety (90) days to agree to the continuation of the Agreement for the Renewal Term. Absent agreement

to the Renewal Term this Agreement shall expire on the Expiration Date. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the "Term."

2.2 Early Termination By Provider. In the event that any of the following events or circumstances occur, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) Prior to the commencement of the Installation Work, there exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date, after undertaking commercially reasonable due diligence, that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(b) Prior to the commencement of the Installation Work, there is a change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to materially adversely affect the economics of the installation for Provider and its investors.

(c) Prior to the Commercial Operation Date, despite commercially reasonable efforts, Provider is unable to obtain financing for the System on terms and conditions reasonably satisfactory to it.

(d) Prior to the commencement of the Installation Work, despite commercially reasonable efforts, Provider is unable to secure planning permissions and other Governmental Approvals necessary to construct the System on the Premises.

(e) Prior to the Commercial Operation Date, there has been a Material Adverse Change in Purchaser's credit-worthiness.

(f) Prior to the Commercial Operation Date, Provider has been unable to obtain the necessary government land use permits and/or approvals for the System, including but not limited to any state, local or federal permits that may be required to operate the System on the Premises despite the commercially reasonable efforts of Provider to obtain such permits and approvals.

2.3. Early Termination by Purchaser. In the event that any of the following events or circumstances occur, Purchaser may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) In the event that Provider has not submitted to the Local Electric Utility, within forty-five (45) days of the Effective Date, a complete interconnection application seeking authorization to interconnect the System to the Local Electric Utility System;

(b) In the event that Provider has not submitted applications for zoning and other local land use permits and approvals, within sixty (60) days after the Effective Date.

(c) In the event that Provider has not commenced construction of the System by June 30, 2018.

(d) In the event that the Commercial Operation Date shall not have occurred by December 31, 2018.

2.4 Non Appropriation. Subject to Section 8.2(b)(i), Purchaser's liability for payments hereunder is conditioned upon appropriations from the Board of Finance. As provided in Section 8.2(b)(iii), the Purchaser agrees to use its best efforts to obtain appropriations necessary to make such payments. However, in the event the Board of Finance ceases to provide funds for the continuation of payments, this Agreement shall terminate within thirty (30) days of written notice to Provider, without any further obligations of Purchaser and without penalty including any payment of liquidated damages as set forth in paragraph 11.2(b).

### 3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 hereto and Applicable Law.

3.2 Approvals; Permits. Purchaser shall reasonably cooperate with Provider (without the expenditure of monies) in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility or any Governmental Authority.

#### 3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Provider shall inform Purchaser when the testing is scheduled to take place and will allow for Purchaser or Purchaser's representative to observe testing.

(b) Commercial Operation shall occur when the results of such testing indicate that the System is capable of generating electric energy for six (6) continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility, then Provider shall send a written notice and supporting documentation to Purchaser to that effect, and the date of such notice shall be the Commercial Operation Date.

### 4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense;

4.2 Metering. The Local Electric Utility will install and maintain a meter, referred to as the "Net Energy Meter", which will measure the net amount of electrical energy flowing to and from the Premises, or Net Metered Production.

4.3 Meter Accuracy. On behalf of Purchaser as the Local Electric Utility's customer of record, Provider may, on its own initiative, and shall upon the request of the Purchaser, exercise Local Electric Utility customer rights to arrange for testing of the accuracy of the Net Energy Meter.

### 5. DELIVERY OF NET METERED PRODUCTION.

5.1 Purchase Requirement. Purchaser agrees to purchase the Net Metered Production generated by the System during each relevant month of the Term, whether or not Purchaser is able to use any of such Net Metered Production.

5.2 Estimated Annual Production. The annual estimate of electricity generated by the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set forth in Schedule 4 hereto. Purchaser

acknowledges and agrees that the Net Metered Production could exceed the Estimated Annual Production in any given year and Purchaser shall still be responsible for purchases above the Estimated Annual Production.

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase does not include Environmental Attributes, Capacity Benefits or Solar Incentives, each of which shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives, Capacity Benefits or Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Purchaser and Provider agree that Purchaser shall be entitled to make the claims and statements in the form of, and substantially similar to, those set forth in **Schedule 8 ("Purchaser Public Statements")**. If Purchaser seeks to make a claim or statement that is materially different from the Purchaser Public Statements, Purchaser shall submit to Provider for approval any press releases regarding Purchaser's use of solar or renewable energy from the System and shall not submit for publication any such releases without the prior written approval of Provider, which shall not be unreasonably withheld or delayed. Without limiting Provider's other rights hereunder, in the event that Purchaser breaches its obligations under this Section 5.3 and has been notified by Provider of such breach and afforded a reasonable opportunity to cure such breach (not to exceed 30 days) and, as a result thereof, the value of the Environmental Attributes generated by the System is reduced, as a direct and proximate result of Purchaser's statement, Purchaser shall pay to Provider the value of such reduction.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party

5.5 Net Energy Metering. The Parties will work cooperatively and in good faith to meet all Net Energy Metering requirements under Applicable Law and Local Electric Utility tariffs, including applicable interconnection and metering requirements. The Parties agree that (a) Provider shall transmit such Net Metered Production into the Local Electric Utility system on behalf of and for the account of Purchaser, and (b) Purchaser (or its designee) shall be entitled to any and all Virtual Net Metering Credits issued by the Local Electric Utility resulting from such transmission.

## 6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment (the "Payment") for the Net Metered Production during each monthly Billing Cycle of the Term equal to the product of (x) the Net Metered Production for the relevant month multiplied by (y) the kWh Rate for such month.

6.2 Purchaser Shortfall Credit/Payment. (a) Subject to Section 10.1, if the Guaranteed Annual Output is not met in any rolling, three-year period after the Commercial Operation Date, then Provider shall credit to Purchaser on future Payments (see Section 6.1), 20% of an amount equal to the product of the (i) Production Shortfall multiplied by (ii) the average Virtual Net Metering Credit Rate for said period (the "Shortfall Credit").

It is the intention of the parties that in the event the Guaranteed Annual Output is not met in any rolling three year period, that the Provider shall credit or pay to the Purchaser an amount sufficient to make the Purchaser whole and, to that end, if the Production Shortfall would not have been eligible for Net Energy Metering, no credit shall be given under this Section 6.2.

(b) If any Shortfall Credit shall remain at the end of the Term, such Shortfall Credit shall be payable in cash within 30 days of the end of the Term.

(c) Notwithstanding the foregoing, within six (6) months prior to the end of the Term, the parties shall in good faith determine whether the size of the Shortfall Credit at the time requires an accelerated payment mechanism in advance of the end of the Term based on such factors as the size of the Shortfall Credit, current rates and remaining expected production.

6.3 Invoice. Purchaser shall provide Provider with access to its online statements from the Local Electric Utility in Purchaser's capacity as Customer-Generator of the System. Within 5 days of the online posting of such statements by the Local Electric Utility, Provider shall invoice Purchaser (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement."

6.4 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within the time specified in Schedule 6 hereto.

6.5 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. If Purchaser does not have electronic funds transfer capability, the Parties shall agree to an alternative method of payment. All payments that are not paid when due and not disputed shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 6.6 below, all payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.6 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

6.7 Billing Adjustments Following Local Electric Utility Billing Adjustments. If, as a result of a Local Electric Utility billing adjustment to correct an inaccuracy of the Net Energy Meter, the quantity of Net Metered Production is decreased (the "Electricity Deficiency Quantity") and the Local Electric Utility reduces the amount of Virtual Net Metering Credits awarded for such period, Provider shall reimburse Purchaser for the amount paid by Purchaser in consideration for the Electricity Deficiency Quantity. If the quantity of Net Metered Production is increased (the "Electricity Surplus Quantity") and the Local Electric Utility increases the amount of Net Metering Credits for such period, Purchaser shall pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period.

## 7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

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

(b) System Condition. Provider shall operate, maintain and repair the System in a good and workmanlike manner and shall take all actions reasonably necessary to ensure that the System is capable of generating the Guaranteed Annual Output and operating at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to

be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Interconnection Fees. Provider shall be responsible for all costs, fees, charges and obligations required to connect the System to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Purchaser be responsible for any Interconnection Obligations.

(e) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work and System Operations and shall comply with all Applicable Laws pertaining to environmental protection and the health and safety of persons and real and personal property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Provider shall obtain and maintain appropriate general liability, property and worker's compensation insurance as required by law.

(f) Compliance with Applicable Law. Purchaser and Provider shall comply with all Applicable Laws that apply to them in connection with their performance under the Agreement and the transactions contemplated hereby, including, without limitation, the Net Metering Rules, during the Initial Term and any subsequent term.

(g) Property Rights. Provider shall ensure that the Lease is maintained in good standing for the Initial Term and any Extended Term and that Provider, or its Assigns, shall have the right to install, maintain and access the System and otherwise fulfill its obligations under this Agreement during the Initial Term and any Extended Term.

7.2 Purchaser's Covenants. Purchaser covenants and agrees to the following:

(a) Purchaser shall provide to Provider such documentation (including billing statements from the Local Electric Utility), as may be reasonably requested by Provider for the purposes of the Parties fulfilling their mutual obligations under this Agreement.

(b) Customer-Generator. Purchaser shall execute documents to designate Purchaser as the customer of record for the Local Electric Utility meter in connection with the System and otherwise establish Purchaser as the beneficiary of Virtual Net Metering Credits from the System for purposes of the Local Electric Utility.

(c) Consents and Approvals. Purchaser shall ensure that any authorizations required of Purchaser under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(d) Virtual Net Metering Services Agreement. Purchaser shall comply with its obligations under, and shall maintain in full force and effect, the Virtual Net Metering Service Agreement. Purchaser shall not amend, supplement or otherwise modify or vary the terms of, or sell, assign or otherwise dispose of any part of its interest in, the Virtual Net Metering Service Agreement without the prior written consent of Provider and Provider's Financing Party.

## 8. REPRESENTATIONS, WARRANTIES & ACKNOWLEDGEMENTS.

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

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

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

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

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

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

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

### 8.2 Representations, Warranties and Acknowledgements of Purchaser.

(a) Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants to Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

(b). Purchaser acknowledges the essential nature of the services being provided under this Agreement and in connection therewith, represents, warrants and covenants that:

(i) that existing appropriations exist with respect to all payments required hereunder during Purchaser's current fiscal year.

(ii) it has fully complied with all procurement, public bidding and municipal contracting requirements under Applicable Law in order to enter into this Agreement; and

(iii) in the event any payment hereunder (including any Estimated Remaining Payments) is or becomes subject to any necessary appropriation, Purchaser shall use its best efforts to appropriate the funds necessary to satisfy such obligations.



8.3 Representations and Warranties and Acknowledgements of Provider. Provider represents and warrants that it has, or the lessor of the Premises has, caused a Phase I Environmental Site Assessment pursuant to ASTM E1527, and a Phase II Environmental Site Assessment pursuant to ASTM E1903, if recommended by the Phase I, to be undertaken by a consultant licensed to practice in the State of Connecticut, which assessments have concluded that the Premises does not contain and there has not been a release, seepage, emission, migration, or spill or a Hazardous Material that requires clean-up or remediation pursuant to Applicable Law and that the Premises is not an "establishment" under the Connecticut Transfer Act, Sections 22a-134 through 22a-134e of the Connecticut General Statutes (CGS), as amended by Public Acts 09-235 and 09-3.

## 9. TAXES AND GOVERNMENTAL FEES.

9.1 Provider Obligations. Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.

## 10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement); A Force Majeure Event shall not be based on the economic hardship of either Party, a change in law or the action or inaction by a Governmental Authority.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (d) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that neither Purchaser nor Provider shall be excused from making any payments and/or Shortfall Credits or paying any unpaid amounts due in respect of Virtual Net Metering Credits delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected either Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the Party not claiming the Force Majeure shall be entitled to terminate the Agreement upon sixty (60) days' prior written notice to the other Party. If at the end of such sixty (60) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination).

## 11. DEFAULT.

### 11.1 Provider Defaults and Purchaser Remedies.

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

- (i) A Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay or credit Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and
- (iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.
- (iv) Subject to Section 10.1, if 75% of the Guaranteed Annual Output is not met in any rolling, three-year period after the Commercial Operation Date, provided that Provider and/or the Financing Party shall have the right to cure by paying Purchaser the Shortfall Credit determined in paragraph 6.2 hereof within 30 days of the applicable measurement date.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement immediately and exercise any other remedy it may have at law or equity or under the Agreement.

### 11.2 Purchaser Defaults and Provider's Remedies.

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

- (i) A Bankruptcy Event shall have occurred with respect to Purchaser;
- (ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and
- (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, Purchaser shall pay the Estimated Remaining Payments as liquidated damages and Provider may exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Provider shall use reasonable efforts to mitigate its damages.

The Parties agree that it would be extremely difficult to determine precisely the amount of actual damages that would be suffered by Provider due to the termination of this Agreement due to a Purchaser Default, but that liquidated damages set forth in this Section 11.2(b) (the "Liquidated Damages") are a fair and

reasonable determination of the amount of actual damages that would be suffered by Provider for the applicable deficiency, and that these Liquidated Damages and other amounts do not constitute a penalty. Purchaser hereby expressly waives any defense or right to contest the validity of these Liquidated Damages on the grounds that they are void as penalties or are not reasonably related to actual damages

## 12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the Agreement.

12.2 A Party's maximum liability to the other Party under the Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to indemnity obligations hereunder in respect of personal injury.

## 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (a) assign this Agreement to an Affiliate provided such assignment occurs no later than 90 days after the Commercial Operation Date, and that Affiliate has the financial wherewithal and ability to perform Provider's obligations at least equal to Provider; (b) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 hereto, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit C hereto. In the event that Provider identifies the Financing Party as Huntington National Bank, then Purchaser agrees to execute the Consent and Agreement attached as Exhibit D. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Provider shall not release Purchaser of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5 hereto, or in a subsequent notice to Purchaser, then Purchaser hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement.

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the System.

Any Financing Party shall be an intended third-party beneficiary of this Section 13.2. Further, Purchaser shall, upon the request of Provider or any Financing Party, provide a signed acknowledgement and confirmation for the benefit of the Financing Party, substantially in the form as Provider or the Financing Party may reasonably request, which acknowledgment and confirmation shall certify, to the extent true and correct, that to the best of Purchaser's knowledge, (1) this Agreement is in full force and effect, (2) no modifications have been made, (3) no disputes or defaults exist, (4) no events have occurred that would,

with the giving of notice or the passage of time, constitute a default under this Agreement, (5) all amounts then due and owing have been paid, and (6) the Commercial Operation Date has occurred.

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider's and Financing Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except that Provider and Financing Party each reserve the right in its sole discretion to reject the assignment of this Agreement by the Purchaser to any party that does not have a credit rating equal to or better than the Purchaser. Any assignment by Purchaser without the prior written consent of Provider and Financing Party shall not release Purchaser of its obligations hereunder.

#### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 5 hereto, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be emailed to: GCONRAD@westportct.gov.

#### 15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides information that is expressly identified as confidential information, such as business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the System, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Further either party may disclose such Confidential Information as required by law, including, but not limited to, the Freedom of Information Act. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. Except for the Purchase Public Statements, the Parties shall use reasonable efforts to coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review any publicity materials or press releases by the other Party that refer to, or that describe any aspect of, the Agreement. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

Notwithstanding the foregoing, Provider acknowledges that Purchaser is a public agency. Approval of this Agreement and statements regarding all aspects of this Agreement will be expressed in a public forum and subject to public comment.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

## 16. INDEMNITY.

16.1 Indemnity. Subject to Section 12, to the extent permitted by Applicable Law, Provider agrees that it shall indemnify, defend and hold harmless the Purchaser, its permitted successors and assigns and its directors, officers, members, shareholders and employees) from and against any and all Losses incurred by the Purchaser to the extent arising from or out of or related to the following: (a) any material breach of this Agreement by Provider; (b) violation of Applicable Law by the Provider, including without limitation actions or omissions of the Provider in conflict with applicable regulations governing the Interconnection Obligations or the Connecticut VNM Regulations; (c) the negligence, recklessness, willful misconduct, or fraud of the Provider; (d) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of the Provider's negligence or willful misconduct or (e) any infringement of patents or the improper use of other proprietary rights by the Provider or its employees or representatives. Provider, however, Provider will not be required to reimburse or indemnify the Purchaser for any Loss to the extent such Loss is due to Purchaser's negligence or willful misconduct.

16.2 Purchaser shall inform the Provider of any claim for which it intends to invoke indemnification and, at Provider's request and reasonable expense, reasonably cooperate with Provider in defending such claim. The Provider shall assume, at its cost and expense, the defense of such claim through its legal counsel selected and reasonably acceptable to the Purchaser, except that the Purchaser may at its option and expense select and be represented by separate counsel. Provider shall have control over the suit or proceedings, including the right to settle; provided, however, the Provider will not, absent the written consent of the Purchaser, consent to the entry of any judgment or enter into any settlement that (1) provides for any relief other than the payment of monetary damages for which the Provider shall be solely liable and (2) does not release the Purchaser, from all liability in respect thereof. In no event shall the Purchaser be liable for any claims that are compromised or settled in violation of this Section.

## 17. DISPUTE RESOLUTION.

17.1 Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

17.2 Mediation. If, after such negotiation in accordance with Section 17.1, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to pursue its legal remedies in the appropriate forum. If a mediation takes place, the mediator's fee and expenses shall be paid equally by each Party.

## 18. MISCELLANEOUS.

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

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

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

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

18.6 Survival. The obligations under Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Connecticut without reference to any choice of law principles. The Parties agree that the State and Federal courts in Connecticut shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law.

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

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

18.10 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

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

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

***[Remainder of page intentionally left blank.]***

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

"PURCHASER": TOWN OF WESTPORT

By:

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

Name: \_\_\_\_\_

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

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

"PROVIDER": PLAINFIELD SOLAR LLC, a Connecticut limited liability company

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

Name: Christopher Little

Title: Vice President

Date: July 8, 2019



**EXHIBIT A**  
**COMMERCIAL GUARANTY**

**Provider: Plainfield Solar LLC**  
c/o Ecos Energy LLC  
222 S. 9<sup>th</sup> St, Suite 1600  
Minneapolis, MN 55402

**Purchaser: The Town of Westport, Connecticut**  
110 Myrtle Avenue  
Westport, CT 06880

**Guarantor: Allico Finance Limited**  
1740 Broadway, 15<sup>th</sup> Floor  
New York, NY 10019

**GUARANTEE.** For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of all amounts due (the "Indebtedness") from Provider to Purchaser under that certain Solar Power Services Agreement Between Provider and Purchaser dated as of July \_\_, 2019 (the "Agreement"), and the performance and discharge of all of Provider's obligations thereunder. This is a guaranty of payment and performance and not of collection, so Purchaser can enforce this Guaranty against Guarantor even when Purchaser has not exhausted Purchaser's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Purchaser on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Provider's obligations under the Agreement.

Guarantor acknowledges receipt of good and valuable consideration for the making of this Guaranty.

Under this Guaranty, Guarantor's obligations are continuing and shall not be affected by the bankruptcy or other insolvency of the Provider or by a modification, termination or expiration of the Agreement.

**AMENDMENTS.** This Guaranty, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**GOVERNING LAW.** This Guaranty will be governed by federal law applicable to Purchaser and, to the extent not preempted by federal law, the laws of the State of Connecticut without regard to its conflicts of law provisions.

**NOTICES.** Any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty.

**SEVERABILITY.** If any term, provision or condition of this Guaranty shall be invalid, illegal or unenforceable in any respect, the remainder of this Guaranty shall be construed without the same and the application of such term, provision or condition to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, as the case may be, shall not be affected thereby, and each term, provision and condition of this Guaranty shall be valid and enforced to the fullest extent permitted by law.

**GUARANTOR:**

**ALLCO FINANCE LIMITED**

By: /s/ \_\_\_\_\_  
Thomas Melone

**EXHIBIT B**

**VIRTUAL NET METERING SERVICE AGREEMENT**

**Exhibit C**  
**of General Conditions**

**Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) Consent to Collateral Assignment. Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.

(b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of the Provider default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:

i. If Provider defaults in the performance of any of its obligations under the Agreement, or upon the occurrence or non-occurrence of any event or condition under the Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, constitute a Provider Default or enable Purchaser to terminate or suspend its performance under the Agreement (a "Default or Termination Event"), Purchaser will not terminate or suspend its performance under the Agreement until it first gives written notice of such Default or Termination Event to Financing Party and affords Financing Party the right to cure such Default or Termination Event within the applicable cure period concurrent with that afforded Provider under the Agreement ("Cure Period").

ii. In addition, if Financing Party gives Purchaser written notice prior to the expiration of the Cure Period of Financing Party's intention to cure such Default or Termination Event (which notice shall include a reasonable description of the time during which it anticipates to cure such Default or Termination Event) and is diligently proceeding to cure such Default or Termination Event, notwithstanding the applicable Cure Period, Financing Party shall have a period of sixty (60) days (or, if such Default or Termination Event is for failure by the Provider to pay an amount to Purchaser which is due and payable under the Agreement, thirty (30) days) from the expiration of the applicable Cure Period to cure such Default or Termination Event, provided, however, that (a) if possession of the Project is necessary to cure any such non-monetary Default or Termination Event and Financing Party has commenced foreclosure proceedings within sixty (60) days after notice of such Default or Termination Event and is diligently pursuing such foreclosure proceedings, Financing Party will be allowed a reasonable time, not to exceed one hundred eighty (180) days, to complete such proceedings and cure such Default or Termination Event, and (b) if Financing Party is prohibited from curing any such Default or Termination Event by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Provider, then the Cure Period specified herein shall be extended for the period of such prohibition, so long as Financing Party is diligently pursuing removal of such process, stay or injunction. Financing Party shall provide Purchaser with reports concerning the status of efforts to cure a Default or Termination Event upon Purchaser's reasonable request.

**EXHIBIT D**  
**FORM OF CONSENT AND AGREEMENT**

**CONSENT TO COLLATERAL ASSIGNMENT**

This Consent to Collateral Assignment (the “Consent”) is by and among the Town of Westport, Connecticut (“Purchaser”), a Connecticut municipality, Plainfield Solar LLC, a Connecticut limited liability company (“Provider”), and The Huntington National Bank, a national banking association as collateral agent for the benefit of AFL-HBAN Solar Trust (“Lessor”) under the Sale Leaseback Financing (as herein after defined) (in such capacity, “Financing Party”).

**RECITALS**

A. Purchaser and Provider have entered into (i) that certain Solar Power Services Agreement, dated as of \_\_\_\_\_, 201\_\_ with respect to the photovoltaic generating system (“System”) (the “Agreement”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

B. Financing Party, Lessor and Provider will enter into a sale leaseback financing transaction (the “Sale Leaseback Financing”) with respect to the System under which title to the System will pass from Provider to Lessor.

C. In connection with the Sale Leaseback Financing, (i) Provider will grant to Financing Party a security interest in Provider’s right, title and interest in, to and under the Agreement, including without limitation the payments due by Purchaser thereunder from time to time, all rights of Provider to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to or for breach of or default under the Agreement, claims of the Provider for damages arising out of or for breach of or default under the Agreement, and the right of the Provider to terminate the Agreement, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder, pursuant to one or more a security agreements to be entered into by and between Provider and Financing Party (the “Collateral Assignments”), and (ii) the direct parent of Provider may pledge to the Financing Party the membership interests of Provider pursuant to one or more a pledge agreements to be entered into by and between the direct parent of Provider and Financing Party (together with the Collateral Assignment, the “Pledge”).

**Agreement**

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree, notwithstanding anything in the Agreement to the contrary, as follows:

1. Provider hereby notifies Purchaser of the Sale Leaseback Financing and the Pledge, and designates Financing Party as a “Financing Party” as such term is defined in each Agreement.
2. Purchaser hereby consents to and acknowledges the security interests granted or to be granted by the Sale Leaseback Financing and the Pledge, and acknowledges and agrees that Financing Party is entitled to the benefits provided with respect to a “Financing Party” as such term is defined in the Agreement, including without limitation the provisions of Article 13 and Exhibit A of the Agreement.
3. Without limiting the provisions of Article 13 and Exhibit A of each Agreement, Purchaser agrees that it will not, without the prior written consent of Financing Party (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the Agreement or (b)

consent to or accept any termination or cancellation of any of the Agreement by Provider except that the Financing Party's consent shall not be required in the event of a termination under Section 2.4 of the Agreement..

4. Notices to Financing Party shall be delivered to the following address, as the same may be updated from time to time by written notice to Purchaser.

Huntington Equipment Finance Purchaser Service  
The Huntington National Bank  
Equipment Finance Division  
Huntington Center  
525 Vine Street, 14th Floor CN200C  
Cincinnati, OH 45202  
[HBEF.Service@huntington.com](mailto:HBEF.Service@huntington.com)  
(866)329-7286

5. Purchaser represents, warrants and acknowledges to and for the benefit of Financing Party and Provider that as of the date hereof (i) the Agreement is in full force and effect, (ii) there exists no event or condition which constitutes a Default under the Agreement or gives rise to a right to terminate the Agreement, or that would, with the giving of notice or lapse of time, or both, constitute a Default under the Agreement or give rise to a right to terminate the Agreement, (iii) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein, and (iv) except for the Collateral Assignment, Purchaser has no notice of any assignment relative to any right, title and interest of Provider in, to and under the Agreement.
6. Promptly upon the request of Financing Party or Provider, and in any case within five (5) Business Days of such request, Purchaser covenants and agrees to provide a bring-down of the representations, warranties and acknowledgments set forth in Section 5 hereof in the form attached hereto as Exhibit A, to the extent such representations, warranties and acknowledgments remain true and correct as of such date.
7. Until Purchaser shall have received written notice from Financing Party that the Pledge has been discharged pursuant to the terms thereof, the Purchaser hereby acknowledges that Financing Party has the right to further redirect all payments and amounts the Purchaser is obligated to pay under the Agreement as Financing Party may direct in writing (each such direction, a "Redirect Notice"). Provider hereby irrevocably instructs Purchaser, and Purchaser hereby agrees, to make all payments and transfer all amounts Purchaser is obligated to pay or transfer under the Agreement on and after the effective date of a Redirect Notice to the account or address specified and in accordance with the directions set forth in the Redirect Notice from Financing Party.
8. Until Purchaser shall have received written notice from Financing Party that the Pledge has been discharged pursuant to the terms thereof, following the termination of the Agreement, Purchaser agrees that notwithstanding Section 11.2(b)(iii) of such terminated Agreement, none of Provider, Financing Party or the respective assignees or designees of the foregoing shall be required to enter into any contract with any New User that fails to satisfy Financing Party's internal requirements with respect to "know-your-customer" rules, anti-money laundering and other then-applicable legal

and regulatory compliance policies and procedures, and its then-applicable credit policies, in each case as consistently applied by Financing Party.

9. Purchaser acknowledges and agrees that it has elected not to terminate the Agreement pursuant to Section 2.3 of the Agreement, and hereby waives any such termination rights.
10. Without limiting the Financing Party's rights under Article 13 and Exhibit C of the Agreement, Financing Party shall have the right but not the obligation to cure any Default or Termination Event (as defined in Exhibit C to the Agreement) resulting from any rejection, revocation, or termination of the guaranty delivered by Allco Finance Limited in connection with the Agreement, by providing substitute credit support in the form of either (i) a guaranty from an Investment Grade Person, or (ii) a letter of credit from a U.S. commercial bank (or the U.S. branch of a foreign commercial bank) that maintains a credit rating of at least "A-" by Standard & Poor's Rating Services or its successor ("Standard and Poor's"), or "A3" by Moody's Investors Service, Inc. or its successor ("Moody's"), in each case in an amount equal to the difference between the Purchaser's cost to cover and the contact price over the then-remaining term of the Agreement (as reasonably determined by Purchaser and Financing Party in accordance with Section 2-712(2) of the Connecticut Uniform Commercial Code). "Investment Grade" shall mean in the case of a Person, that such Person's long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) are rated (i) "Baa3" or higher by Moody's, or (ii) "BBB-" or higher by Standard and Poor's.
11. Each of Purchaser and Provider represents and warrants for the benefit of each other party to this Consent that (i) it is duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which the nature of its business requires it to be so qualified, (ii) it has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby, and (iii) the execution, delivery and performance of this Consent by such party have been duly authorized by all necessary corporate or other action on the part of such party.
12. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party hereto claimed to have so waived or excused.
13. There are no third party beneficiaries to this Consent.
14. The invalidity or unenforceability of any provision of this Consent shall not affect the validity or enforceability of any other provision of this Consent, which shall remain in full force and effect.
15. This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the parties and may be used in lieu of the original Consent for all purposes.
16. This Consent may be modified, amended or rescinded only by an instrument in writing signed by all parties hereto.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the undersigned have executed this Consent as of that date and year first written above.

**TOWN OF WESTPORT:**

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

Name: \_\_\_\_\_

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

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

**PLAINFIELD SOLAR LLC:**

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

Name: \_\_\_\_\_

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

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

**THE HUNTINGTON NATIONAL BANK,**

as Collateral Agent

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

Name: \_\_\_\_\_

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

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

{01316381.DOCX Ver. 1} [Signature Page to Consent to Collateral Assignment]



Exhibit A – Form of Bring-Down Certificate

[INSERT DATE]

Huntington Equipment Finance Purchaser Service  
The Huntington National Bank  
Equipment Finance Division  
Huntington Center  
525 Vine Street, 14th Floor CN200C  
Cincinnati, OH 45202  
[HBEF.Service@huntington.com](mailto:HBEF.Service@huntington.com)  
(866)329-7286

RE: Bring-Down of Representations and Warranties – Plainfield Solar Project

Ladies and Gentlemen:

Reference is made to (i) that certain Solar Power Services Agreement, dated as of \_\_\_\_\_, 201\_\_ with respect to the photovoltaic generating system connected to meter number \_\_\_\_\_, (the “Agreement”), and (ii) that certain Consent to Collateral Assignment (the “Consent”) by and among the Town of Westport, Connecticut (“Purchaser”), a Connecticut municipality, Plainfield Solar LLC (“Provider”), and The Huntington National Bank, a national banking association as collateral agent for the benefit of AFL-HBAN Solar Trust (“Financing Party”). Capitalized terms used but not defined herein shall have the meanings assigned in the Consent.

Pursuant to Section 6 of the Consent, Purchaser represents, warrants and acknowledges to and for the benefit of Financing Party and Provider that as of the date hereof (i) the Agreement and the Consent are in full force and effect, (ii) there exists no event or condition which constitutes a Default under the Agreement or gives rise to a right to terminate the Agreement, or that would, with the giving of notice or lapse of time, or both, constitute a Default under the Agreement or give rise to a right to terminate the Agreement, (iii) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein, (iv) except for the Collateral Assignment, Buyer has no notice of any assignment relative to any right, title and interest of Seller in, to and under the Agreement, and (v) the Commercial Operation Date occurred on [ ].

**TOWN OF WESTPORT:**

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

Name: \_\_\_\_\_

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

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



**SCHEDULES**

**I. Schedule 1: Description of Premises and System**

**Solar System Premises:**           **1 Industrial Drive, Plainfield, CT 06374**

**Anticipated Subsidy    Rebate    or    Zero Emission Renewable Energy Certificates**

**Solar System Size:**           999 kW (AC) (representing an initial estimate, which may vary depending on the final design of the System)

**Scope:**                           Design and supply grid-interconnected, ground mounted solar electric (PV) system.

**Module:**                         LG 400W

**Inverter:**                        ABB 166.6 kW

**Description of Premises:**

That certain parcel of land situated on the southerly side of Connecticut Route 14A and the easterly side of the Connecticut Interstate 395 in the Town of Plainfield, County of Windham, and State of Connecticut known as Lot 69, Map 17/Block 36 as shown on a map entitled “Perimeter Survey Prepared For” Sheppard/Steuer Trust Plainfield Pike – Route 14A Plainfield, Connecticut Drawing Scale: 1” = 100’ Date: May 2015” which plan is recorded in the Plainfield Town Land Records.

**II. Schedule 2 – Estimated Remaining Payments.**

<b>Plainfield Solar Project (Westport)</b>	
<b>Estimated Remaining Payments</b>	
<b>Termination Occurs at the end of Year:</b>	<b>Early Termination Fee</b>
<b>1</b>	\$2,762,283.66
<b>2</b>	\$2,609,448.18

<b>3</b>	\$2,465,825.28
<b>4</b>	\$2,322,920.50
<b>5</b>	\$2,180,730.24
<b>6</b>	\$2,039,250.93
<b>7</b>	\$1,898,479.02
<b>8</b>	\$1,758,410.97
<b>9</b>	\$1,619,043.26
<b>10</b>	\$1,480,372.39
<b>11</b>	\$1,342,394.87
<b>12</b>	\$1,205,107.24
<b>13</b>	\$1,068,506.04
<b>14</b>	\$932,587.86
<b>15</b>	\$797,349.26
<b>16</b>	\$662,786.86
<b>17</b>	\$528,897.27
<b>18</b>	\$395,677.13
<b>19</b>	\$263,123.09
<b>20</b>	\$131,231.82




4	1,672,827	14	1,591,042
5	1,664,462	15	1,583,087
6	1,656,140	16	1,575,172
7	1,647,859	17	1,567,296
8	1,639,620	18	1,559,459
9	1,631,422	19	1,551,662
10	1,623,265	20	1,543,904

The values set forth in the table above are estimates, of approximately how many MWhs are expected to be generated annually by the System. The table will be updated upon final design of the System.

**V. Schedule 5 – Notice Information**

**Purchaser:**

**First Selectman**  
**Town of Westport**  
**110 Myrtle Avenue**  
**Westport, CT 06880**

**With a copy to**

**Town Attorney.**  
**Town of Westport**  
**110 Myrtle Avenue**  
**Westport CT, 06880**

**Provider:**

**Plainfield Solar LLC**  
**% Thomas Melone**  
**1740 Broadway**  
**15<sup>th</sup> Floor**  
**New York, NY 100019**  
**Phone: (212) 681-1120**  
**E-mail: Thomas.Melone@allcous.com**  
**With a copy to**

**Ecos Energy LLC**  
**% Chris Little**  
**222 S 9th St, Suite 1600**  
**Minneapolis, MN 55402**  
**Phone: (651) 268-2053**  
**E-mail: chris.little@ecosrenewable.com**

**Financing Party:**

The Huntington National Bank  
Equipment Finance Division  
Huntington Center  
525 Vine Street, 14th Floor CN200C  
Cincinnati, OH 45202  
[HBEF.Service@huntington.com](mailto:HBEF.Service@huntington.com)  
(866)329-7286

**VI. Schedule 6 – Time of Payment**

Purchaser shall pay all undisputed amounts due hereunder within thirty (30) after the date of the applicable Invoice Date.

**VII. Schedule 7 – Initial Term**

The Initial Term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date, unless and until terminated earlier pursuant to the provisions of the Agreement.

**VIII. Schedule 8 – Purchaser Public Statements**

- The Town of Westport is committed to its goal of NetZero 2050 which includes supporting the installation of a solar power installation that provides approximate 1500Mwh of energy to benefit the Town each year.
- Westport is supporting the addition of approximately 1500Mwh of clean energy to the grid, which is the equivalent of [#%] of the Town's annual electricity needs, powering facilities such as the fire and police departments, the sewer facilities plant, (BA-3 and BA-4) and Town Hall
- The environmental benefit of the project, which are in the form of Renewable Energy Certificates and represent the avoided carbon emissions are being sold to Eversource Energy
- Through this project the Town of Westport is also helping the State achieve our collective carbon reduction goal.



**SOLAR POWER SERVICES AGREEMENT**

**Dated as of**

**March \_\_, 2020**

**between**

**THE TOWN OF WESTPORT, CONNECTICUT**

**and**

**DICKINSON SOLAR LLC**

## SOLAR POWER SERVICES AGREEMENT

This Solar Power Services Agreement (“**Agreement**”) is entered into as of March \_\_\_\_, 2020 (the “Effective Date”), by and between Dickinson Solar LLC, a Connecticut limited liability company, together with any successors and permitted assigns (“Provider”), and Town of Westport, a Connecticut municipality, together with any successors and permitted assigns (“Purchaser”, and, together with Provider, each, a “Party” and together, the “Parties”).

**WHEREAS**, Provider is the lessee of the real property comprising the Premises (as described on Schedule 1 hereto), and desires to use a portion of such property for the construction, operation and maintenance of a solar powered electric generating system, and to sell the electric energy produced by the system to the Purchaser; and

**WHEREAS**, Allco Finance Limited (“Parent”) intends to fully fund Provider’s obligations hereunder to develop, design, construct, and install the solar powered electric generating system and to guarantee the obligations of Provider in accordance with the Parent Guaranty in the form of Exhibit A hereto.

**WHEREAS**, Purchaser desires to obtain Virtual Net Metering Credits and Excess Credits available from the output of the Provider’s solar powered electric generating system; and

**NOW, THEREFORE**, in consideration of the promises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### 1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Production” means the amount of energy recorded by Provider’s metering equipment during each calendar month of the Term, pursuant to Section 4.2.

“Affiliate” or “Affiliates” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

“Agreement” means this Solar Power Services Agreement.

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

“Assignment” has the meaning set forth in Section 13.1.

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

(a) such Party has (i) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (ii) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (iii) made a general assignment for the benefit of its creditors; (iv) commenced a voluntary case under any bankruptcy law; (v)

filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (vi) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (vii) taken any corporate or other action for the purpose of effecting any of the foregoing; or

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

"Billing Cycle" means the monthly billing cycle established by the Local Electric Utility.

"Business Day" means any day other than Saturday, Sunday or any other day on which banking institutions in Hartford, CT are required or authorized by Applicable Law to be closed for business.

"Capacity Benefits" means the amount of capacity that is attributable to the physical generating capacity of Provider's System which may (i) count toward the New England Independent System Operator's (NE-ISO) installed capacity market or the capacity market of any other independent system operator located in the United States or (ii) provide expense or cost reduction to the LEU from NE-ISO.

"Commercial Operation" and "Commercial Operation Date" have the meaning set forth in Section 3.3(b).

"Confidential Information" has the meaning set forth in Section 15.1.

"Default" shall mean either a Provider Default or a Purchaser Default.

"Dispute" has the meaning provided in Section 17.1.

"Effective Date" has the meaning set forth in the preamble.

"Environmental Attributes" excludes electric energy and capacity produced but includes, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products and shall specifically include any Zero Emission Renewable Energy Certificates or Low Emission Renewable Energy Certificates generated by the production of the System as well as any other emissions, air quality, or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the generation of energy by a low emissions or zero emissions renewable energy facility as defined in the Energy Act, whether existing as of the Effective Date or in the future, and whether as a result of any present or future Applicable Law or national or international voluntary program, as well as any and all generation attributes under the Connecticut RPS regulations and under any Applicable Law or program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future; and further, means: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the System's generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the NEPOOL GIS in connection with energy generated by the System; and (c) any voluntary emission reduction credits obtained or obtainable by Provider in connection with the generation of energy by the System. If during the Term, a change in laws or regulations occurs that creates value in Environmental Attributes, then at Provider's request, Purchaser shall cooperate with Provider to register such Environmental Attributes or take other action necessary to obtain the value of such Environmental Attributes for Purchaser.

“Estimated Remaining Payments” means as of any date, the estimated remaining Payments to be made through the end of the then-applicable Term as set forth on Schedule 2 hereto.

“Estimated Annual Production” has the meaning set forth in Section 5.3.

“Excess Metering Credit” shall mean the monetary value of the excess electricity generated by the Solar Electric Generating Equipment, and credited to the Purchaser by the Local Electric Utility for any period of time in any year after the Purchaser has reached the VNM Annual Credit Cap.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

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

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Guaranteed Annual Output” means 80% of the Estimated Annual Production as confirmed by an independent engineer approved by the Financing Party, such amount to be subject to 0.5% annual degradation measured on a rolling, three-year basis beginning on the Commercial Operation Date.

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

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

“Initial Term” has the meaning set forth in Section 2.1 for the time period specified in Schedule 7 hereto.

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

“Invoice Date” has the meaning set forth in Section 6.2.

“Hazardous Material” means a substance or material that the Connecticut Department Energy and Environmental Protection, the United States Environmental Protection Agency, or the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous, toxic, dangerous, or otherwise poses a threat to human health or the environment under any state or federal Law.

“kWh Rate” means (a) for the Initial Term, the price per kWh set forth in Schedule 3 hereto and (b) for the Renewal Term, the rate as provided pursuant to Section 2.1 hereof.

“Lease” means the Land Lease Agreement, dated as of May 1, 2019, entered into between Provider and PLH, LLC.

“LEU Retail Rate” means the average applicable all-inclusive rate (expressed on a \$/kWh basis) charged by the Local Electric Utility in any contract year for electricity that is delivered to Purchaser's municipal accounts, and shall include, without limitation, all basic service or competitive supplier commodity charges, transmission, transition, distribution and other delivery charges, demand charges, customer charges, ancillary service charges, renewable energy, energy efficiency, taxes, and other fees and charges in place.

"Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services at the Premises.

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

"Material Adverse Change" means any event, circumstance, fact, change, development, condition or effect that either individually or in the aggregate, has, had or could reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Purchaser or Provider (as applicable).

"Net Energy Metering" means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a solar system and fed back to the Local Electric Utility, as set forth in the Net Metering Rules.

"Net Energy Meter" has the meaning set forth in Section 4.2.

"Net Metered Production" means the amount of energy delivered to the Local Electric Utility generated by the System.

"Net Metering Rules" means, collectively, and as amended from time to time, the State of Connecticut General Statutes Section 16-244u as amended by Public Act No. 13-298, Sections 35 and Public Act 13-247 Section 119; General Statutes 16-1 and 16-243y; the Regulations of Connecticut State Agencies Sections 16-11-100 through 16-11-238; as well as any statutes or regulations relevant to virtual net metering that are later amended, enacted or adopted and further subject to the virtual net metering policies adopted by Public Utilities Regulatory Authority (PURA) in its Final Decision dated December 17, 2014 Docket No. 13-08-14RE01, PURA Development of the Administrative Processes and Program Specifications for Virtual Net Metering – VNM Methodology, and any Connecticut net metering regulations related thereto, orders issued by the PURA, and the associated net metering tariff of the Local Electric Utility.

"Party" or "Parties" has the meaning set forth in the preamble to this Agreement.

"Payment" has the meaning set forth in Section 6.1.

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

"Premises" means the premises described in Schedule 1 hereto. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 hereto.

"Production Shortfall" means the amount, expressed in kWh, by which the Net Metered Production generated by the System in any particular period is less than the Guaranteed Annual Output for that period.

"Provider" has the meaning set forth in the preamble to this Agreement.

"Provider Default" has the meaning set forth in Section 11.1(a).

"Purchaser Default" has the meaning set forth in Section 11.2(a).

"Renewal Term" has the meaning set forth in Section 2.1.

"Representative" has the meaning set forth in Section 15.1.

"Security Agreement" has the meaning set forth in Section 8.2.

"Solar Incentives" means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 hereto and all other solar or renewable energy subsidies and incentives.

"Solar Power Services Agreement" means this Solar Power Services Agreement (including the Schedules and Exhibits attached hereto).

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

"System" or "Solar Electric Generating Equipment" means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 hereto that generates electricity.

"System Operations" means the Provider's operation, maintenance and repair of the System performed in accordance with the requirements contained herein.

"Term" has the meaning set forth in Section 2.1.

"Virtual Net Metering Credit Rate" shall mean the monetary value of the electricity generated by the System in excess of on-site use, as set forth in the Net Metering Rules, and credited to the Purchaser by the Local Electric Utility.

"Virtual Net Metering Service Agreement" shall mean that certain Virtual Net Metering Service Agreement between the Town of Westport and Connecticut Light & Power Company d/b/a Eversource Energy dated October 18, 2019 attached hereto as Exhibit B.

"VNM Annual Credit Cap" shall mean \$542,393 or as otherwise set forth on the Virtual Net Metering Services Agreement.

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

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for the number of years from the Commercial Operation Date specified in Schedule 7 hereto for the Initial Term, unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed for an additional five (5) year term (the "Renewal Term"). At least one hundred and eighty (180) days, but no more than three hundred and sixty five (365) days, prior to the expiration of the Initial Term, Provider shall give written notice to Purchaser of the availability of the Renewal Term, including the kWh Rate that would be applicable during the Renewal Term. Purchaser shall have ninety (90) days to agree to the continuation of the Agreement for the Renewal Term. Absent agreement

to the Renewal Term this Agreement shall expire on the Expiration Date. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the "Term."

2.2 Early Termination By Provider. In the event that any of the following events or circumstances occur, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) Prior to the commencement of the Installation Work, there exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date, after undertaking commercially reasonable due diligence, that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(b) Prior to the commencement of the Installation Work, there is a change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to materially adversely affect the economics of the installation for Provider and its investors.

(c) Prior to the Commercial Operation Date, despite commercially reasonable efforts, Provider is unable to obtain financing for the System on terms and conditions reasonably satisfactory to it.

(d) Prior to the commencement of the Installation Work, despite commercially reasonable efforts, Provider is unable to secure planning permissions and other Governmental Approvals necessary to construct the System on the Premises.

(e) Prior to the Commercial Operation Date, there has been a Material Adverse Change in Purchaser's credit-worthiness.

(f) Prior to the Commercial Operation Date, Provider has been unable to obtain the necessary government land use permits and/or approvals for the System, including but not limited to any state, local or federal permits that may be required to operate the System on the Premises despite the commercially reasonable efforts of Provider to obtain such permits and approvals.

2.3. Early Termination by Purchaser. In the event that any of the following events or circumstances occur, Purchaser may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) In the event that Provider has not submitted to the Local Electric Utility, within forty-five (45) days of the Effective Date, a complete interconnection application seeking authorization to interconnect the System to the Local Electric Utility System;

(b) In the event that Provider has not submitted applications for zoning and other local land use permits and approvals, within sixty (60) days after the Effective Date.

(c) In the event that Provider has not commenced construction of the System by June 30, 2018.

(d) In the event that the Commercial Operation Date shall not have occurred by December 31, 2018.

2.4 Non Appropriation. Subject to Section 8.2(b)(i), Purchaser's liability for payments hereunder is conditioned upon appropriations from the Board of Finance. As provided in Section 8.2(b)(iii), the Purchaser agrees to use its best efforts to obtain appropriations necessary to make such payments. However, in the event the Board of Finance ceases to provide funds for the continuation of payments, this Agreement shall terminate within thirty (30) days of written notice to Provider, without any further obligations of Purchaser and without penalty including any payment of liquidated damages as set forth in paragraph 11.2(b).

### 3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 hereto and Applicable Law.

3.2 Approvals; Permits. Purchaser shall reasonably cooperate with Provider (without the expenditure of monies) in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility or any Governmental Authority.

#### 3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Provider shall inform Purchaser when the testing is scheduled to take place and will allow for Purchaser or Purchaser's representative to observe testing.

(b) Commercial Operation shall occur when the results of such testing indicate that the System is capable of generating electric energy for six (6) continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility, then Provider shall send a written notice and supporting documentation to Purchaser to that effect, and the date of such notice shall be the Commercial Operation Date.

### 4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense;

4.2 Metering. The Local Electric Utility will install and maintain a meter, referred to as the "Net Energy Meter", which will measure the net amount of electrical energy flowing to and from the Premises, or Net Metered Production.

4.3 Meter Accuracy. On behalf of Purchaser as the Local Electric Utility's customer of record, Provider may, on its own initiative, and shall upon the request of the Purchaser, exercise Local Electric Utility customer rights to arrange for testing of the accuracy of the Net Energy Meter.

### 5. DELIVERY OF NET METERED PRODUCTION.

5.1 Purchase Requirement. Purchaser agrees to purchase the Net Metered Production generated by the System during each relevant month of the Term, whether or not Purchaser is able to use any of such Net Metered Production.

5.2 Estimated Annual Production. The annual estimate of electricity generated by the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set forth in Schedule 4 hereto. Purchaser



acknowledges and agrees that the Net Metered Production could exceed the Estimated Annual Production in any given year and Purchaser shall still be responsible for purchases above the Estimated Annual Production.

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase does not include Environmental Attributes, Capacity Benefits or Solar Incentives, each of which shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives, Capacity Benefits or Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Purchaser and Provider agree that Purchaser shall be entitled to make the claims and statements in the form of, and substantially similar to, those set forth in **Schedule 8 ("Purchaser Public Statements")**. If Purchaser seeks to make a claim or statement that is materially different from the Purchaser Public Statements, Purchaser shall submit to Provider for approval any press releases regarding Purchaser's use of solar or renewable energy from the System and shall not submit for publication any such releases without the prior written approval of Provider, which shall not be unreasonably withheld or delayed. Without limiting Provider's other rights hereunder, in the event that Purchaser breaches its obligations under this Section 5.3 and has been notified by Provider of such breach and afforded a reasonable opportunity to cure such breach (not to exceed 30 days) and, as a result thereof, the value of the Environmental Attributes generated by the System is reduced, as a direct and proximate result of Purchaser's statement, Purchaser shall pay to Provider the value of such reduction.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party

5.5 Net Energy Metering. The Parties will work cooperatively and in good faith to meet all Net Energy Metering requirements under Applicable Law and Local Electric Utility tariffs, including applicable interconnection and metering requirements. The Parties agree that (a) Provider shall transmit such Net Metered Production into the Local Electric Utility system on behalf of and for the account of Purchaser, and (b) Purchaser (or its designee) shall be entitled to any and all Virtual Net Metering Credits issued by the Local Electric Utility resulting from such transmission.

## 6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment (the "Payment") for the Net Metered Production during each monthly Billing Cycle of the Term equal to the product of (x) the Net Metered Production for the relevant month multiplied by (y) the kWh Rate for such month.

6.2 Purchaser Shortfall Credit/Payment. (a) Subject to Section 10.1, if the Guaranteed Annual Output is not met in any rolling, three-year period after the Commercial Operation Date, then Provider shall, credit to Purchaser on future Payments (see Section 6.1), 20% of an amount equal to the product of the (i) Production Shortfall multiplied by (ii) the average Virtual Net Metering Credit Rate for said period (the "Shortfall Credit").

It is the intention of the parties that in the event the Guaranteed Annual Output is not met in any rolling three year period, that the Provider shall credit or pay to the Purchaser an amount sufficient to make the Purchaser whole and, to that end, if the Production Shortfall would not have been eligible for Net Energy Metering, no credit shall be given under this Section 6.2.

(b) If any Shortfall Credit shall remain at the end of the Term, such Shortfall Credit shall be payable in cash within 30 days of the end of the Term.

(c) Notwithstanding the foregoing, within six (6) months prior to the end of the Term, the parties shall in good faith determine whether the size of the Shortfall Credit at the time requires an accelerated payment mechanism in advance of the end of the Term based on such factors as the size of the Shortfall Credit, current rates and remaining expected production.

6.3 Invoice. Purchaser shall provide Provider with access to its online statements from the Local Electric Utility in Purchaser's capacity as Customer-Generator of the System. Within 5 days of the online posting of such statements by the Local Electric Utility, Provider shall invoice Purchaser (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement."

6.4 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within the time specified in Schedule 6 hereto.

6.5 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. If Purchaser does not have electronic funds transfer capability, the Parties shall agree to an alternative method of payment. All payments that are not paid when due and not disputed shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 6.6 below, all payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.6 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

6.7 Billing Adjustments Following Local Electric Utility Billing Adjustments. If, as a result of a Local Electric Utility billing adjustment to correct an inaccuracy of the Net Energy Meter, the quantity of Net Metered Production is decreased (the "Electricity Deficiency Quantity") and the Local Electric Utility reduces the amount of Virtual Net Metering Credits awarded for such period, Provider shall reimburse Purchaser for the amount paid by Purchaser in consideration for the Electricity Deficiency Quantity. If the quantity of Net Metered Production is increased (the "Electricity Surplus Quantity") and the Local Electric Utility increases the amount of Net Metering Credits for such period, Purchaser shall pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period.

## 7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

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

(b) System Condition. Provider shall operate, maintain and repair the System in a good and workmanlike manner and shall take all actions reasonably necessary to ensure that the System is capable of generating the Guaranteed Annual Output and operating at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to

be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Interconnection Fees. Provider shall be responsible for all costs, fees, charges and obligations required to connect the System to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Purchaser be responsible for any Interconnection Obligations.

(e) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work and System Operations and shall comply with all Applicable Laws pertaining to environmental protection and the health and safety of persons and real and personal property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Provider shall obtain and maintain appropriate general liability, property and worker's compensation insurance as required by law.

(f) Compliance with Applicable Law. Purchaser and Provider shall comply with all Applicable Laws that apply to them in connection with their performance under the Agreement and the transactions contemplated hereby, including, without limitation, the Net Metering Rules, during the Initial Term and any subsequent term.

(g) Property Rights. Provider shall ensure that the Lease is maintained in good standing for the Initial Term and any Extended Term and that Provider, or its Assigns, shall have the right to install, maintain and access the System and otherwise fulfill its obligations under this Agreement during the Initial Term and any Extended Term.

7.2 Purchaser's Covenants. Purchaser covenants and agrees to the following:

(a) Purchaser shall provide to Provider such documentation (including billing statements from the Local Electric Utility), as may be reasonably requested by Provider for the purposes of the Parties fulfilling their mutual obligations under this Agreement.

(b) Customer-Generator. Purchaser shall execute documents to designate Purchaser as the customer of record for the Local Electric Utility meter in connection with the System and otherwise establish Purchaser as the beneficiary of Virtual Net Metering Credits from the System for purposes of the Local Electric Utility.

(c) Consents and Approvals. Purchaser shall ensure that any authorizations required of Purchaser under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(d) Virtual Net Metering Services Agreement. Purchaser shall comply with its obligations under, and shall maintain in full force and effect, the Virtual Net Metering Service Agreement. Purchaser shall not amend, supplement or otherwise modify or vary the terms of, or sell, assign or otherwise dispose of any part of its interest in, the Virtual Net Metering Service Agreement without the prior written consent of Provider and Provider's Financing Party.

## 8. REPRESENTATIONS, WARRANTIES & ACKNOWLEDGEMENTS.

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

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

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

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

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

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

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

### 8.2 Representations, Warranties and Acknowledgements of Purchaser.

(a) Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants to Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

(b). Purchaser acknowledges the essential nature of the services being provided under this Agreement and in connection therewith, represents, warrants and covenants that:

(i) that existing appropriations exist with respect to all payments required hereunder during Purchaser's current fiscal year.

(ii) it has fully complied with all procurement, public bidding and municipal contracting requirements under Applicable Law in order to enter into this Agreement; and

(iii) in the event any payment hereunder (including any Estimated Remaining Payments) is or becomes subject to any necessary appropriation, Purchaser shall use its best efforts to appropriate the funds necessary to satisfy such obligations.

8.3 Representations and Warranties and Acknowledgements of Provider. Provider represents and warrants that it has, or the lessor of the Premises has, caused a Phase I Environmental Site Assessment pursuant to ASTM E1527, and a Phase II Environmental Site Assessment pursuant to ASTM E1903, if recommended by the Phase I, to be undertaken by a consultant licensed to practice in the State of Connecticut, which assessments have concluded that the Premises does not contain and there has not been a release, seepage, emission, migration, or spill or a Hazardous Material that requires clean-up or remediation pursuant to Applicable Law and that the Premises is not an "establishment" under the Connecticut Transfer Act, Sections 22a-134 through 22a-134e of the Connecticut General Statutes (CGS), as amended by Public Acts 09-235 and 09-3.

## 9. TAXES AND GOVERNMENTAL FEES.

9.1 Provider Obligations. Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.

## 10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement); A Force Majeure Event shall not be based on the economic hardship of either Party, a change in law or the action or inaction by a Governmental Authority.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (d) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that neither Purchaser nor Provider shall be excused from making any payments and/or Shortfall Credits or paying any unpaid amounts due in respect of Virtual Net Metering Credits delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected either Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the Party not claiming the Force Majeure shall be entitled to terminate the Agreement upon sixty (60) days' prior written notice to the other Party. If at the end of such sixty (60) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination).

## 11. DEFAULT.

### 11.1 Provider Defaults and Purchaser Remedies.

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

- (i) A Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay or credit Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and
- (iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.
- (iv) Subject to Section 10.1, if 75% of the Guaranteed Annual Output is not met in any rolling, three-year period after the Commercial Operation Date, provided that Provider and/or the Financing Party shall have the right to cure by paying Purchaser the Shortfall Credit determined in paragraph 6.2 hereof within 30 days of the applicable measurement date.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement immediately and exercise any other remedy it may have at law or equity or under the Agreement.

### 11.2 Purchaser Defaults and Provider's Remedies.

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

- (i) A Bankruptcy Event shall have occurred with respect to Purchaser;
- (ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and
- (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, Purchaser shall pay the Estimated Remaining Payments as liquidated damages and Provider may exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Provider shall use reasonable efforts to mitigate its damages.

The Parties agree that it would be extremely difficult to determine precisely the amount of actual damages that would be suffered by Provider due to the termination of this Agreement due to a Purchaser Default, but that liquidated damages set forth in this Section 11.2(b) (the "Liquidated Damages") are a fair and

reasonable determination of the amount of actual damages that would be suffered by Provider for the applicable deficiency, and that these Liquidated Damages and other amounts do not constitute a penalty. Purchaser hereby expressly waives any defense or right to contest the validity of these Liquidated Damages on the grounds that they are void as penalties or are not reasonably related to actual damages

## 12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the Agreement.

12.2 A Party's maximum liability to the other Party under the Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to indemnity obligations hereunder in respect of personal injury.

## 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (a) assign this Agreement to an Affiliate provided such assignment occurs no later than 90 days after the Commercial Operation Date, and that Affiliate has the financial wherewithal and ability to perform Provider's obligations at least equal to Provider; (b) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 hereto, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit C hereto. In the event that Provider identifies the Financing Party as Huntington National Bank, then Purchaser agrees to execute the Consent and Agreement attached as Exhibit D. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Provider shall not release Purchaser of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5 hereto, or in a subsequent notice to Purchaser, then Purchaser hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement.

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the System.

Any Financing Party shall be an intended third-party beneficiary of this Section 13.2. Further, Purchaser shall, upon the request of Provider or any Financing Party, provide a signed acknowledgement and confirmation for the benefit of the Financing Party, substantially in the form as Provider or the Financing Party may reasonably request, which acknowledgment and confirmation shall certify, to the extent true and correct, that to the best of Purchaser's knowledge, (1) this Agreement is in full force and effect, (2) no modifications have been made, (3) no disputes or defaults exist, (4) no events have occurred that would,

with the giving of notice or the passage of time, constitute a default under this Agreement, (5) all amounts then due and owing have been paid, and (6) the Commercial Operation Date has occurred.

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider's and Financing Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except that Provider and Financing Party each reserve the right in its sole discretion to reject the assignment of this Agreement by the Purchaser to any party that does not have a credit rating equal to or better than the Purchaser. Any assignment by Purchaser without the prior written consent of Provider and Financing Party shall not release Purchaser of its obligations hereunder.

#### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 5 hereto, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be emailed to: GCONRAD@westportct.gov.

#### 15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides information that is expressly identified as confidential information, such as business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the System, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Further either party may disclose such Confidential Information as required by law, including, but not limited to, the Freedom of Information Act. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:



- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. Except for the Purchase Public Statements, the Parties shall use reasonable efforts to coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review any publicity materials or press releases by the other Party that refer to, or that describe any aspect of, the Agreement. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

Notwithstanding the foregoing, Provider acknowledges that Purchaser is a public agency. Approval of this Agreement and statements regarding all aspects of this Agreement will be expressed in a public forum and subject to public comment.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

## 16. INDEMNITY.

16.1 Indemnity. Subject to Section 12, to the extent permitted by Applicable Law, Provider agrees that it shall indemnify, defend and hold harmless the Purchaser, its permitted successors and assigns and its directors, officers, members, shareholders and employees) from and against any and all Losses incurred by the Purchaser to the extent arising from or out of or related to the following: (a) any material breach of this Agreement by Provider; (b) violation of Applicable Law by the Provider, including without limitation actions or omissions of the Provider in conflict with applicable regulations governing the Interconnection Obligations or the Connecticut VNM Regulations; (c) the negligence, recklessness, willful misconduct, or fraud of the Provider; (d) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of the Provider's negligence or willful misconduct or (e) any infringement of patents or the improper use of other proprietary rights by the Provider or its employees or representatives. Provider, however, Provider will not be required to reimburse or indemnify the Purchaser for any Loss to the extent such Loss is due to Purchaser's negligence or willful misconduct.

16.2 Purchaser shall inform the Provider of any claim for which it intends to invoke indemnification and, at Provider's request and reasonable expense, reasonably cooperate with Provider in defending such claim. The Provider shall assume, at its cost and expense, the defense of such claim through its legal counsel selected and reasonably acceptable to the Purchaser, except that the Purchaser may at its option and expense select and be represented by separate counsel. Provider shall have control over the suit or proceedings, including the right to settle; provided, however, the Provider will not, absent the written consent of the Purchaser, consent to the entry of any judgment or enter into any settlement that (1) provides for any relief other than the payment of monetary damages for which the Provider shall be solely liable and (2) does not release the Purchaser, from all liability in respect thereof. In no event shall the Purchaser be liable for any claims that are compromised or settled in violation of this Section.

## 17. DISPUTE RESOLUTION.

17.1 Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

17.2 Mediation. If, after such negotiation in accordance with Section 17.1, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to pursue its legal remedies in the appropriate forum. If a mediation takes place, the mediator's fee and expenses shall be paid equally by each Party.

## 18. MISCELLANEOUS.

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

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

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

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

18.6 Survival. The obligations under Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Connecticut without reference to any choice of law principles. The Parties agree that the State and Federal courts in Connecticut shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law.

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

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

18.10 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

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

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

***[Remainder of page intentionally left blank.]***

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

"PURCHASER": TOWN OF WESTPORT

By:

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

Name: \_\_\_\_\_

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

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

"PROVIDER": DICKINSON SOLAR LLC, a Connecticut limited liability company

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

Name: Christopher Little

Title: Vice President

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

**EXHIBIT A**  
**COMMERCIAL GUARANTY**

**Provider:** Dickinson Solar LLC  
c/o Ecos Energy LLC  
222 S. 9<sup>th</sup> St, Suite 1600  
Minneapolis, MN 55402

**Purchaser:** The Town of Westport, Connecticut  
110 Myrtle Avenue  
Westport, CT 06880

**Guarantor:** Allco Finance Limited  
1740 Broadway, 15<sup>th</sup> Floor  
New York, NY 10019

**GUARANTEE.** For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of all amounts due (the "Indebtedness") from Provider to Purchaser under that certain Solar Power Services Agreement Between Provider and Purchaser dated as of July \_\_, 2019 (the "Agreement"), and the performance and discharge of all of Provider's obligations thereunder. This is a guaranty of payment and performance and not of collection, so Purchaser can enforce this Guaranty against Guarantor even when Purchaser has not exhausted Purchaser's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Purchaser on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Provider's obligations under the Agreement.

Guarantor acknowledges receipt of good and valuable consideration for the making of this Guaranty.

Under this Guaranty, Guarantor's obligations are continuing and shall not be affected by the bankruptcy or other insolvency of the Provider or by a modification, termination or expiration of the Agreement.

**AMENDMENTS.** This Guaranty, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**GOVERNING LAW.** This Guaranty will be governed by federal law applicable to Purchaser and, to the extent not preempted by federal law, the laws of the State of Connecticut without regard to its conflicts of law provisions.

**NOTICES.** Any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty.

**SEVERABILITY.** If any term, provision or condition of this Guaranty shall be invalid, illegal or unenforceable in any respect, the remainder of this Guaranty shall be construed without the same and the application of such term, provision or condition to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, as the case may be, shall not be affected thereby, and each term, provision and condition of this Guaranty shall be valid and enforced to the fullest extent permitted by law.

**GUARANTOR:**

**ALLCO FINANCE LIMITED**

By: /s/  
Thomas Melone

**EXHIBIT B**

**VIRTUAL NET METERING SERVICE AGREEMENT**

**Exhibit C**  
**of General Conditions**

**Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) **Consent to Collateral Assignment.** Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of the Provider default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. If Provider defaults in the performance of any of its obligations under the Agreement, or upon the occurrence or non-occurrence of any event or condition under the Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, constitute a Provider Default or enable Purchaser to terminate or suspend its performance under the Agreement (a "Default or Termination Event"), Purchaser will not terminate or suspend its performance under the Agreement until it first gives written notice of such Default or Termination Event to Financing Party and affords Financing Party the right to cure such Default or Termination Event within the applicable cure period concurrent with that afforded Provider under the Agreement ("Cure Period").

ii. In addition, if Financing Party gives Purchaser written notice prior to the expiration of the Cure Period of Financing Party's intention to cure such Default or Termination Event (which notice shall include a reasonable description of the time during which it anticipates to cure such Default or Termination Event) and is diligently proceeding to cure such Default or Termination Event, notwithstanding the applicable Cure Period, Financing Party shall have a period of sixty (60) days (or, if such Default or Termination Event is for failure by the Provider to pay an amount to Purchaser which is due and payable under the Agreement, thirty (30) days) from the expiration of the applicable Cure Period to cure such Default or Termination Event, provided, however, that (a) if possession of the Project is necessary to cure any such non-monetary Default or Termination Event and Financing Party has commenced foreclosure proceedings within sixty (60) days after notice of such Default or Termination Event and is diligently pursuing such foreclosure proceedings, Financing Party will be allowed a reasonable time, not to exceed one hundred eighty (180) days, to complete such proceedings and cure such Default or Termination Event, and (b) if Financing Party is prohibited from curing any such Default or Termination Event by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Provider, then the Cure Period specified herein shall be extended for the period of such prohibition, so long as Financing Party is diligently pursuing removal of such process, stay or injunction. Financing Party shall provide Purchaser with reports concerning the status of efforts to cure a Default or Termination Event upon Purchaser's reasonable request.

**EXHIBIT D**  
**FORM OF CONSENT AND AGREEMENT**

**CONSENT TO COLLATERAL ASSIGNMENT**

This Consent to Collateral Assignment (the “Consent”) is by and among the Town of Westport, Connecticut (“Purchaser”), a Connecticut municipality, Dickinson Solar LLC, a Connecticut limited liability company (“Provider”), and The Huntington National Bank, a national banking association as collateral agent for the benefit of AFL-HBAN Solar Trust (“Lessor”) under the Sale Leaseback Financing (as herein after defined) (in such capacity, “Financing Party”).

**RECITALS**

A. Purchaser and Provider have entered into (i) that certain Solar Power Services Agreement, dated as of \_\_\_\_\_, 201\_\_ with respect to the photovoltaic generating system (“System”) (the “Agreement”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

B. Financing Party, Lessor and Provider will enter into a sale leaseback financing transaction (the “Sale Leaseback Financing”) with respect to the System under which title to the System will pass from Provider to Lessor.

C. In connection with the Sale Leaseback Financing, (i) Provider will grant to Financing Party a security interest in Provider’s right, title and interest in, to and under the Agreement, including without limitation the payments due by Purchaser thereunder from time to time, all rights of Provider to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to or for breach of or default under the Agreement, claims of the Provider for damages arising out of or for breach of or default under the Agreement, and the right of the Provider to terminate the Agreement, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder, pursuant to one or more a security agreements to be entered into by and between Provider and Financing Party (the “Collateral Assignments”), and (ii) the direct parent of Provider may pledge to the Financing Party the membership interests of Provider pursuant to one or more a pledge agreements to be entered into by and between the direct parent of Provider and Financing Party (together with the Collateral Assignment, the “Pledge”).

**Agreement**

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree, notwithstanding anything in the Agreement to the contrary, as follows:

1. Provider hereby notifies Purchaser of the Sale Leaseback Financing and the Pledge, and designates Financing Party as a “Financing Party” as such term is defined in each Agreement.
2. Purchaser hereby consents to and acknowledges the security interests granted or to be granted by the Sale Leaseback Financing and the Pledge, and acknowledges and agrees that Financing Party is entitled to the benefits provided with respect to a “Financing Party” as such term is defined in the Agreement, including without limitation the provisions of Article 13 and Exhibit A of the Agreement.
3. Without limiting the provisions of Article 13 and Exhibit A of each Agreement, Purchaser agrees that it will not, without the prior written consent of Financing Party (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the Agreement or (b)



consent to or accept any termination or cancellation of any of the Agreement by Provider except that the Financing Party's consent shall not be required in the event of a termination under Section 2.4 of the Agreement..

4. Notices to Financing Party shall be delivered to the following address, as the same may be updated from time to time by written notice to Purchaser.

Huntington Equipment Finance Purchaser Service  
The Huntington National Bank  
Equipment Finance Division  
Huntington Center  
525 Vine Street, 14th Floor CN200C  
Cincinnati, OH 45202  
[HBEF.Service@huntington.com](mailto:HBEF.Service@huntington.com)  
(866)329-7286

5. Purchaser represents, warrants and acknowledges to and for the benefit of Financing Party and Provider that as of the date hereof (i) the Agreement is in full force and effect, (ii) there exists no event or condition which constitutes a Default under the Agreement or gives rise to a right to terminate the Agreement, or that would, with the giving of notice or lapse of time, or both, constitute a Default under the Agreement or give rise to a right to terminate the Agreement, (iii) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein, and (iv) except for the Collateral Assignment, Purchaser has no notice of any assignment relative to any right, title and interest of Provider in, to and under the Agreement.
6. Promptly upon the request of Financing Party or Provider, and in any case within five (5) Business Days of such request, Purchaser covenants and agrees to provide a bring-down of the representations, warranties and acknowledgments set forth in Section 5 hereof in the form attached hereto as Exhibit A, to the extent such representations, warranties and acknowledgments remain true and correct as of such date.
7. Until Purchaser shall have received written notice from Financing Party that the Pledge has been discharged pursuant to the terms thereof, the Purchaser hereby acknowledges that Financing Party has the right to further redirect all payments and amounts the Purchaser is obligated to pay under the Agreement as Financing Party may direct in writing (each such direction, a "Redirect Notice"). Provider hereby irrevocably instructs Purchaser, and Purchaser hereby agrees, to make all payments and transfer all amounts Purchaser is obligated to pay or transfer under the Agreement on and after the effective date of a Redirect Notice to the account or address specified and in accordance with the directions set forth in the Redirect Notice from Financing Party.
8. Until Purchaser shall have received written notice from Financing Party that the Pledge has been discharged pursuant to the terms thereof, following the termination of the Agreement, Purchaser agrees that notwithstanding Section 11.2(b)(iii) of such terminated Agreement, none of Provider, Financing Party or the respective assignees or designees of the foregoing shall be required to enter into any contract with any New User that fails to satisfy Financing Party's internal requirements with respect to "know-your-customer" rules, anti-money laundering and other then-applicable legal

and regulatory compliance policies and procedures, and its then-applicable credit policies, in each case as consistently applied by Financing Party.

9. Purchaser acknowledges and agrees that it has elected not to terminate the Agreement pursuant to Section 2.3 of the Agreement, and hereby waives any such termination rights.
10. Without limiting the Financing Party's rights under Article 13 and Exhibit C of the Agreement, Financing Party shall have the right but not the obligation to cure any Default or Termination Event (as defined in Exhibit C to the Agreement) resulting from any rejection, revocation, or termination of the guaranty delivered by Allco Finance Limited in connection with the Agreement, by providing substitute credit support in the form of either (i) a guaranty from an Investment Grade Person, or (ii) a letter of credit from a U.S. commercial bank (or the U.S. branch of a foreign commercial bank) that maintains a credit rating of at least "A-" by Standard & Poor's Rating Services or its successor ("Standard and Poor's"), or "A3" by Moody's Investors Service, Inc. or its successor ("Moody's"), in each case in an amount equal to the difference between the Purchaser's cost to cover and the contact price over the then-remaining term of the Agreement (as reasonably determined by Purchaser and Financing Party in accordance with Section 2-712(2) of the Connecticut Uniform Commercial Code). "Investment Grade" shall mean in the case of a Person, that such Person's long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) are rated (i) "Baa3" or higher by Moody's, or (ii) "BBB-" or higher by Standard and Poor's.
11. Each of Purchaser and Provider represents and warrants for the benefit of each other party to this Consent that (i) it is duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which the nature of its business requires it to be so qualified, (ii) it has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby, and (iii) the execution, delivery and performance of this Consent by such party have been duly authorized by all necessary corporate or other action on the part of such party.
12. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party hereto claimed to have so waived or excused.
13. There are no third party beneficiaries to this Consent.
14. The invalidity or unenforceability of any provision of this Consent shall not affect the validity or enforceability of any other provision of this Consent, which shall remain in full force and effect.
15. This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the parties and may be used in lieu of the original Consent for all purposes.
16. This Consent may be modified, amended or rescinded only by an instrument in writing signed by all parties hereto.

17.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the undersigned have executed this Consent as of that date and year first written above.

**TOWN OF WESTPORT:**

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

Name: \_\_\_\_\_

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

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

**DICKINSON SOLAR LLC:**

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

Name: \_\_\_\_\_

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

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

**THE HUNTINGTON NATIONAL BANK,**

as Collateral Agent

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

Name: \_\_\_\_\_

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

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

[Signature Page to Consent to Collateral Assignment]

Exhibit A – Form of Bring-Down Certificate

[INSERT DATE]

Huntington Equipment Finance Purchaser Service  
The Huntington National Bank  
Equipment Finance Division  
Huntington Center  
525 Vine Street, 14th Floor CN200C  
Cincinnati, OH 45202  
[HBEF.Service@huntington.com](mailto:HBEF.Service@huntington.com)  
(866)329-7286

RE: Bring-Down of Representations and Warranties – Dickinson Solar Project

Ladies and Gentlemen:

Reference is made to (i) that certain Solar Power Services Agreement, dated as of \_\_\_\_\_, 2020\_\_ with respect to the photovoltaic generating system connected to meter number \_\_\_\_\_, (the “Agreement”), and (ii) that certain Consent to Collateral Assignment (the “Consent”) by and among the Town of Westport, Connecticut (“Purchaser”), a Connecticut municipality, Dickinson Solar LLC (“Provider”), and The Huntington National Bank, a national banking association as collateral agent for the benefit of AFL-HBAN Solar Trust (“Financing Party”). Capitalized terms used but not defined herein shall have the meanings assigned in the Consent.

Pursuant to Section 6 of the Consent, Purchaser represents, warrants and acknowledges to and for the benefit of Financing Party and Provider that as of the date hereof (i) the Agreement and the Consent are in full force and effect, (ii) there exists no event or condition which constitutes a Default under the Agreement or gives rise to a right to terminate the Agreement, or that would, with the giving of notice or lapse of time, or both, constitute a Default under the Agreement or give rise to a right to terminate the Agreement, (iii) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein, (iv) except for the Collateral Assignment, Buyer has no notice of any assignment relative to any right, title and interest of Seller in, to and under the Agreement, and (v) the Commercial Operation Date occurred on [ ].

**TOWN OF WESTPORT:**

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

Name: \_\_\_\_\_

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

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



## SCHEDULES

### I. Schedule 1: Description of Premises and System

**Solar System Premises:**           **367 Hartford Turnpike, Hampton, CT 06247**

**Anticipated Rebate or Subsidy**       **Zero Emission Renewable Energy Certificates**

**Solar System Size:**               2,000 kW (AC) (representing an initial estimate, which may vary depending on the final design of the System)

**Scope:**                               Design and supply grid-interconnected, ground mounted solar electric (PV) system.

**Module:**                              LG 400W

**Inverter:**                             ABB 166.6 kW

#### **Description of Premises:**

A certain piece or parcel of land situated southerly side of Fisk Road in the Town of Hampton, County of Windham, and State of Connecticut, said piece or parcel of land being shown as "LEASE SITE 3", on a map entitled, "IMPROVEMENT LOCATION PLAN PREPARED FOR PLH, LLC, SHOWING PROPOSED SOLAR LEASE SITE, Hartford Turnpike (Connecticut Route 6) & Fisk Road Hampton Connecticut, Scale 1" = 100', Sheet 1 of 1, Dated October 22, 2019, by Rob Hellstrom Land Surveying, LLC. Said parcel being more particularly described as follows:

Beginning at the northwest corner of the parcel herein described, said corner being at the northeast corner of a parcel being shown as the "ACCESS EASEMENT" on the above-referenced map;

thence N 90°00'00" E for a distance of 328.38' to a point;  
thence S 28°35'12" E for a distance of 406.68' to a point;  
thence S 38°08'15" E for a distance of 101.45' to a point;  
thence S 62°38'47" E for a distance of 102.98' to a point;  
thence S 00°59'40" E for a distance of 52.62' to a point;  
thence S 19°40'01" W for a distance of 262.59' to a point;  
thence S 34°30'25" W for a distance of 151.41' to a point;  
thence N 80°35'27" W for a distance of 135.09' to a point;  
thence N 23°25'31" W for a distance of 51.29' to a point;  
thence N 44°09'16" W for a distance of 286.13' to a point;  
thence N 78°41'01" W for a distance of 91.74' to a point;  
thence N 64°15'43" W for a distance of 38.05' to a point;  
thence N 18°05'53" E for a distance of 177.74' to a point;  
thence N 70°15'43" W for a distance of 93.20' to a point;  
thence N 15°56'02" W for a distance of 155.55' to a point;



thence S 90°00'00" E for a distance of 94.68' to a point;  
 thence S 00°00'00" E for a distance of 25.00' to a point;  
 thence S 15°56'12" W for a distance of 153.02' to a point;  
 thence N 90°00'00" E for a distance of 92.23' to a point;  
 thence N 00°00'00" W for a distance of 42.55' to a point;  
 thence N 33°19'15" W for a distance of 68.63' to a point;  
 thence N 15°56'12" E for a distance of 15.71' to a point;  
 thence with a curve turning to the left with an arc length of 128.43', with a radius of 117.00', to a point.  
 thence N 46°57'27" W for a distance of 158.30' to a point;  
 thence N 00°00'00" E for a distance of 81.36' to a point,  
 which is the point of beginning. Having an area of 8.50 acres 370,413 Sq.Ft.

**II. Schedule 2 – Estimated Remaining Payments.**

<b>Dickinson Solar Project (Westport)</b>	
<b>Estimated Remaining Payments</b>	
<b>Termination Occurs at the end of Year:</b>	<b>Early Termination Fee</b>
<b>1</b>	\$5,837,735.59
<b>2</b>	\$5,531,740.99
<b>3</b>	\$5,227,276.36
<b>4</b>	\$4,924,334.06
<b>5</b>	\$4,622,906.46
<b>6</b>	\$4,322,986.01
<b>7</b>	\$4,024,565.16
<b>8</b>	\$3,727,636.41
<b>9</b>	\$3,432,192.30
<b>10</b>	\$3,138,225.42
<b>11</b>	\$2,845,728.37
<b>12</b>	\$2,554,693.81
<b>13</b>	\$2,265,114.42
<b>14</b>	\$1,976,982.92

<b>15</b>	\$1,690,292.09
<b>16</b>	\$1,405,034.70
<b>17</b>	\$1,121,203.61
<b>18</b>	\$838,791.67
<b>19</b>	\$557,791.79
<b>20</b>	\$278,196.91


**III. Schedule 3 –kWh Rate**

For each year of the system term as listed on Schedule 4, the kWh Rate with respect to the Systems under the Agreement for such year shall be **\$0.09 per kWh** for the Net Metered Production for such year up to the Estimated Production in kWhs for such year as listed on Schedule 4. For any Net Metered Production for such year that exceeds the Estimated Production in kWhs for such year, as listed on Schedule 4, the kWh Rate shall be the Excess Net Metering Credit for the electricity produced during such time.

**IV. Schedule 4 – Estimated Annual Production**

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

<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>	<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>
1	3,399,944	11	3,233,721
2	3,382,944	12	3,217,553
3	3,366,030	13	3,201,465
4	3,349,199	14	3,185,457
5	3,332,453	15	3,169,530
6	3,315,791	16	3,153,683
7	3,299,212	17	3,137,914
8	3,282,716	18	3,122,225
9	3,266,303	19	3,106,613
10	3,249,971	20	3,091,080

The values set forth in the table above are estimates, of approximately how many MWhs are expected to be generated annually by the System. The table will be updated upon final design of the System.

**V. Schedule 5 – Notice Information**

**Purchaser:**  
**First Selectman**  
**Town of Westport**  
**110 Myrtle Avenue**  
**Westport, CT 06880**

**Provider:**  
**Dickinson Solar LLC**  
**% Thomas Melone**  
**1740 Broadway**  
**15<sup>th</sup> Floor**  
**New York, NY 100019**  
**Phone: (212) 681-1120**

With a copy to

Town Attorney,  
Town of Westport  
110 Myrtle Avenue  
Westport CT, 06880

E-mail: Thomas.Melone@allcous.com

With a copy to

Ecos Energy LLC  
% Chris Little  
222 S 9th St, Suite 1600  
Minneapolis, MN 55402  
Phone: (651) 268-2053  
E-mail: chris.little@ecosrenewable.com

**Financing Party:**

The Huntington National Bank  
Equipment Finance Division  
Huntington Center  
525 Vine Street, 14th Floor CN200C  
Cincinnati, OH 45202  
HBEF.Service@huntington.com  
(866)329-7286

**VI. Schedule 6 – Time of Payment**

Purchaser shall pay all undisputed amounts due hereunder within thirty (30) after the date of the applicable Invoice Date.

**VII. Schedule 7 – Initial Term**

The Initial Term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date, unless and until terminated earlier pursuant to the provisions of the Agreement.

**VIII. Schedule 8 – Purchaser Public Statements**

- The Town of Westport is committed to its goal of NetZero 2050 which includes supporting the installation of a solar power installation that provides approximate 1500Mwh of energy to benefit the Town each year.
- Westport is supporting the addition of approximately 1500Mwh of clean energy to the grid, which is the equivalent of [#%] of the Town's annual electricity needs, powering facilities such as the fire and police departments, the sewer facilities plant, (BA-3 and BA-4) and Town Hall
- The environmental benefit of the project, which are in the form of Renewable Energy Certificates and represent the avoided carbon emissions are being sold to Eversource Energy
- Through this project the Town of Westport is also helping the State achieve our collective carbon reduction goal.

**Virtual Net Metering Service Agreement**

The Connecticut Light and Power Company doing business as Eversource Energy (the Company) has completed its review of the **Town of Westport #4 Virtual Net Metering (VNM) Application**, including any supplemental information provided to the Company, for the **1000 kW** distributed generation facility located at **1 Industrial Way, Plainfield, CT**. The Company hereby provides an agreement for commencement of participation by this facility in the Company's VNM program ("Agreement").

Your participation in the VNM program is contingent upon agreement with the information set forth in the attached **VNM Credit Cap Calculation** which identifies and details the expected operation of your VNM facility, and the excess kWh and rate applicable in determining the annual VNM credit cap for this facility. By signing this Agreement you agree to this cap, and to abide by all other provisions of the Company's VNM Rider in order to qualify for and receive VNM credits.

Please sign this Agreement, initial the attachments and return all documents to the Company. Upon review and acceptance of these documents the Company will counter sign and establish the date of acceptance into the VNM queue for the facility described herein, as stated below.

*Customer Signature*

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date \_\_\_\_\_

VNM Queue Acceptance Date: **December 9, 2019**

*Company Signature*

By \_\_\_\_\_  
Its \_\_\_\_\_  
Date \_\_\_\_\_

Attachments

CL&P dba Eversource Energy

**VNM Credit Cap Calculation**

Application ID **062519078**  
Application Date **06/25/2019**  
Host **Town of Westport #4**  
Location **1 Industrial Way, Plainfield, CT**  
VNM Category **Municipal**  
Type **1000 KW Solar PV**

**Estimated Annual kWh**

Sales	1,702,072	See VNM Application Form 3
Purchases	3,900	See VNM Application Form 3
Excess	1,698,172	Excess = Sales - Purchases

**Host Tariff**

Rate	30	
VNM Cap Pricing c/kWh	15.953	See VNM Cap Pricing - June 2019
VNM Annual Credit Cap	<b>\$270,909</b>	VNM Credit Cap = Excess kWh * VNM Cap Pricing

Municipal VNM Credit Cap Availability **\$83,478**

**Assigned VNM Credit Cap \$83,478**

VNM Credit Cap on Municipal Waiting List **\$187,431**

**Attachments**

VNM Application Form 3  
VNM Cap Pricing - June 2019

Applicant Initial: \_\_\_\_\_

date: \_\_\_\_\_

**VIRTUAL NET METERING APPLICATION**  
**FORM 3: Customer Host and Beneficial Account Monthly Meter Data**  
*Template for Determination of Excess kWh and VNM Credit at Customer Host*

Instructions: Provide all highlighted information (note: sample data provided in template is to be replaced with data specific to the applicant's proposed VNM facility).

0.53125

Line:	Customer Host	Meter Data (kWh)												Total
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
1	Estimated Monthly Sales <sup>a</sup>	83,884	110,553	153,053	160,438	180,997	185,725	186,044	177,544	155,975	132,281	98,069	77,509	1,702,072
2	Peak	-	-	-	-	-	-	-	-	-	-	-	-	-
3	Off Peak	83,884	110,553	153,053	160,438	180,997	185,725	186,044	177,544	155,975	132,281	98,069	77,509	1,702,072
4	Estimated Monthly Purchases <sup>b</sup>	-	-	-	-	-	-	-	-	-	-	-	-	-
5	Peak	-	-	-	-	-	-	-	-	-	-	-	-	-
6	Off Peak	325	325	325	325	325	325	325	325	325	325	325	325	3,900
7	Total	325	325	325	325	325	325	325	325	325	325	325	325	3,900
8	Estimated Excess kWh	83,559	110,228	152,728	160,113	180,672	185,400	185,719	177,219	155,650	131,956	97,744	77,184	1,698,172
9	Estimated Net Purchase	-	-	-	-	-	-	-	-	-	-	-	-	-
10	Beneficial Accounts													
11	Estimated Purchases	70,500	67,200	75,500	60,600	84,000	93,600	89,400	90,000	85,500	59,100	69,600	76,800	919,800
12	BA1-SGS-51219453008	-	-	-	-	-	-	-	-	-	-	-	-	-
13	BA2-SMS-51274353051	307,280	311,600	120,240	111,600	136,960	342,560	147,600	341,120	146,880	105,120	125,280	118,080	1,516,320
14		-	-	-	-	-	-	-	-	-	-	-	-	-
15		-	-	-	-	-	-	-	-	-	-	-	-	-
16		-	-	-	-	-	-	-	-	-	-	-	-	-
17		-	-	-	-	-	-	-	-	-	-	-	-	-
18		-	-	-	-	-	-	-	-	-	-	-	-	-
19		-	-	-	-	-	-	-	-	-	-	-	-	-
20		-	-	-	-	-	-	-	-	-	-	-	-	-
21	Total Beneficial Account Purchases	177,780	178,800	193,740	172,200	222,960	296,160	237,000	251,120	232,380	164,220	194,880	194,880	2,436,120

Date Prepared (mm/dd/yy): 6/16/2019  
 Prepared by: Christopher Whitman

r = Customer Host is required to provide the monthly total sales and purchases, and for service provided on a time of day basis, the monthly peak and off peak sales and purchases, as measured at the point of interconnection between the distribution system and the Customer Host service location (i.e., the site at which the virtual net metering facility or agricultural demand net metering facility is operating).

a Sales means the delivery of energy from the Customer Host to the distribution system.

b Purchases means the delivery of energy from the distribution system to the Customer Host

CL&P dba Eversource Energy

VNM Cap Pricing - June 2019

**Rate 30**

**Distribution & Transmission VNM Cap Price**

Distribution Charge per kWh	A	4.874	
Transmission Charge per kWh	B	2.396	
D&T Total	C = A+B	7.271	
<b>D &amp; T Average Rate @ 80%</b>	<b>D = C * .8</b>		<b>5.817</b>

**Standard Service Supply VNM Cap Price**

**Jul 2018 - Dec 2018**

Generation Service Charge	E	9.432	
FMCC-Generation	F	<u>-0.010</u>	
Total Supply	G = E+F	9.422	

**Jan 2019 - Jun 2019**

Generation Service Charge	H	10.861	
FMCC-Generation	I	<u>-0.010</u>	
Total Supply	J = H+I	10.851	

$K = (G+J)/2$  **10.137**

**Rate 30 VNM Cap Price**

$L = D + K$  **15.953**

Applicant Initial: \_\_\_\_\_  
 date: \_\_\_\_\_



**SOLAR POWER SERVICES AGREEMENT**

**Dated as of**

**March \_\_, 2020**

**between**

**THE TOWN OF WESTPORT, CONNECTICUT**

**and**

**PLAINFIELD SOLAR 2 LLC**

## SOLAR POWER SERVICES AGREEMENT

This Solar Power Services Agreement ("**Agreement**") is entered into as of March\_\_\_\_, 2020 (the "Effective Date"), by and between Plainfield Solar 2 LLC, a Connecticut limited liability company, together with any successors and permitted assigns ("Provider"), and Town of Westport, a Connecticut municipality, together with any successors and permitted assigns ("Purchaser", and, together with Provider, each, a "Party" and together, the "Parties").

**WHEREAS**, Provider is the lessee of the real property comprising the Premises (as described on Schedule 1 hereto), and desires to use a portion of such property for the construction, operation and maintenance of a solar powered electric generating system, and to sell the electric energy produced by the system to the Purchaser; and

**WHEREAS**, Allco Finance Limited ("Parent") intends to fully fund Provider's obligations hereunder to develop, design, construct, and install the solar powered electric generating system and to guarantee the obligations of Provider in accordance with the Parent Guaranty in the form of Exhibit A hereto.

**WHEREAS**, Purchaser desires to obtain Virtual Net Metering Credits and Excess Credits available from the output of the Provider's solar powered electric generating system; and

**NOW, THEREFORE**, in consideration of the promises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### 1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Actual Monthly Production" means the amount of energy recorded by Provider's metering equipment during each calendar month of the Term, pursuant to Section 4.2.

"Affiliate" or "Affiliates" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means this Solar Power Services Agreement.

"Applicable Law" means, with respect to any Person, any local, state or Federal constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, common law, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 13.1.

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

(a) such Party has (i) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (ii) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (iii) made a general assignment for the benefit of its creditors; (iv) commenced a voluntary case under any bankruptcy law; (v)

filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (vi) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (vii) taken any corporate or other action for the purpose of effecting any of the foregoing; or

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

"Billing Cycle" means the monthly billing cycle established by the Local Electric Utility.

"Business Day" means any day other than Saturday, Sunday or any other day on which banking institutions in Hartford, CT are required or authorized by Applicable Law to be closed for business.

"Capacity Benefits" means the amount of capacity that is attributable to the physical generating capacity of Provider's System which may (i) count toward the New England Independent System Operator's (NE-ISO) installed capacity market or the capacity market of any other independent system operator located in the United States or (ii) provide expense or cost reduction to the LEU from NE-ISO.

"Commercial Operation" and "Commercial Operation Date" have the meaning set forth in Section 3.3(b).

"Confidential Information" has the meaning set forth in Section 15.1.

"Default" shall mean either a Provider Default or a Purchaser Default.

"Dispute" has the meaning provided in Section 17.1.

"Effective Date" has the meaning set forth in the preamble.

"Environmental Attributes" excludes electric energy and capacity produced but includes, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products and shall specifically include any Zero Emission Renewable Energy Certificates or Low Emission Renewable Energy Certificates generated by the production of the System as well as any other emissions, air quality, or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the generation of energy by a low emissions or zero emissions renewable energy facility as defined in the Energy Act, whether existing as of the Effective Date or in the future, and whether as a result of any present or future Applicable Law or national or international voluntary program, as well as any and all generation attributes under the Connecticut RPS regulations and under any Applicable Law or program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future; and further, means: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the System's generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the NEPOOL GIS in connection with energy generated by the System; and (c) any voluntary emission reduction credits obtained or obtainable by Provider in connection with the generation of energy by the System. If during the Term, a change in laws or regulations occurs that creates value in Environmental Attributes, then at Provider's request, Purchaser shall cooperate with Provider to register such Environmental Attributes or take other action necessary to obtain the value of such Environmental Attributes for Purchaser.

“Estimated Remaining Payments” means as of any date, the estimated remaining Payments to be made through the end of the then-applicable Term as set forth on Schedule 2 hereto.

“Estimated Annual Production” has the meaning set forth in Section 5.3.

“Excess Metering Credit” shall mean the monetary value of the excess electricity generated by the Solar Electric Generating Equipment, and credited to the Purchaser by the Local Electric Utility for any period of time in any year after the Purchaser has reached the VNM Annual Credit Cap.

“Expiration Date” means the date on which the Agreement terminates by reason of expiration of the Term.

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

“Force Majeure Event” has the meaning set forth in Section 10.1.

“Guaranteed Annual Output” means 80% of the Estimated Annual Production as confirmed by an independent engineer approved by the Financing Party, such amount to be subject to 0.5% annual degradation measured on a rolling, three-year basis beginning on the Commercial Operation Date.

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

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

“Initial Term” has the meaning set forth in Section 2.1 for the time period specified in Schedule 7 hereto.

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

“Invoice Date” has the meaning set forth in Section 6.2.

“Hazardous Material” means a substance or material that the Connecticut Department Energy and Environmental Protection, the United States Environmental Protection Agency, or the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous, toxic, dangerous, or otherwise poses a threat to human health or the environment under any state or federal Law.

“kWh Rate” means (a) for the Initial Term, the price per kWh set forth in Schedule 3 hereto and (b) for the Renewal Term, the rate as provided pursuant to Section 2.1 hereof.

“Lease” means the Land Lease Agreement, dated as of May 1, 2019, entered into between Provider and PLH, LLC.

“LEU Retail Rate” means the average applicable all-inclusive rate (expressed on a \$/kWh basis) charged by the Local Electric Utility in any contract year for electricity that is delivered to Purchaser’s municipal accounts, and shall include, without limitation, all basic service or competitive supplier commodity charges, transmission, transition, distribution and other delivery charges, demand charges, customer charges, ancillary service charges, renewable energy, energy efficiency, taxes, and other fees and charges in place.

"Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services at the Premises.

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

"Material Adverse Change" means any event, circumstance, fact, change, development, condition or effect that either individually or in the aggregate, has, had or could reasonably be expected to have a material adverse effect on the business, financial condition or results of operations of the Purchaser or Provider (as applicable).

"Net Energy Metering" means the process of measuring the difference between electricity delivered by a Local Electric Utility to a customer and electricity generated by a solar system and fed back to the Local Electric Utility, as set forth in the Net Metering Rules.

"Net Energy Meter" has the meaning set forth in Section 4.2.

"Net Metered Production" means the amount of energy delivered to the Local Electric Utility generated by the System.

"Net Metering Rules" means, collectively, and as amended from time to time, the State of Connecticut General Statutes Section 16-244u as amended by Public Act No. 13-298, Sections 35 and Public Act 13-247 Section 119; General Statutes 16-1 and 16-243y; the Regulations of Connecticut State Agencies Sections 16-11-100 through 16-11-238; as well as any statutes or regulations relevant to virtual net metering that are later amended, enacted or adopted and further subject to the virtual net metering policies adopted by Public Utilities Regulatory Authority (PURA) in its Final Decision dated December 17, 2014 Docket No. 13-08-14RE01, PURA Development of the Administrative Processes and Program Specifications for Virtual Net Metering – VNM Methodology, and any Connecticut net metering regulations related thereto, orders issued by the PURA, and the associated net metering tariff of the Local Electric Utility.

"Party" or "Parties" has the meaning set forth in the preamble to this Agreement.

"Payment" has the meaning set forth in Section 6.1.

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

"Premises" means the premises described in Schedule 1 hereto. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1 hereto.

"Production Shortfall" means the amount, expressed in kWh, by which the Net Metered Production generated by the System in any particular period is less than the Guaranteed Annual Output for that period.

"Provider" has the meaning set forth in the preamble to this Agreement.

"Provider Default" has the meaning set forth in Section 11.1(a).

"Purchaser Default" has the meaning set forth in Section 11.2(a).

"Renewal Term" has the meaning set forth in Section 2.1.

"Representative" has the meaning set forth in Section 15.1.

"Security Agreement" has the meaning set forth in Section 8.2.

"Solar Incentives" means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies including, but not limited to, the subsidies in Schedule 1 hereto and all other solar or renewable energy subsidies and incentives.

"Solar Power Services Agreement" means this Solar Power Services Agreement (including the Schedules and Exhibits attached hereto).

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

"System" or "Solar Electric Generating Equipment" means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Schedule 1 hereto that generates electricity.

"System Operations" means the Provider's operation, maintenance and repair of the System performed in accordance with the requirements contained herein.

"Term" has the meaning set forth in Section 2.1.

"Virtual Net Metering Credit Rate" shall mean the monetary value of the electricity generated by the System in excess of on-site use, as set forth in the Net Metering Rules, and credited to the Purchaser by the Local Electric Utility.

"Virtual Net Metering Service Agreement" shall mean that certain Virtual Net Metering Service Agreement between the Town of Westport and Connecticut Light & Power Company d/b/a Eversource Energy dated \_\_\_\_\_, 2020- attached hereto as Exhibit B.

"VNM Annual Credit Cap" shall mean \$ \_\_\_\_\_ or as otherwise set forth on the Virtual Net Metering Services Agreement.

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

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for the number of years from the Commercial Operation Date specified in Schedule 7 hereto for the Initial Term, unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement may be renewed for an additional five (5) year term (the "Renewal Term"). At least one hundred and eighty (180) days, but no more than three hundred and sixty five (365) days, prior to the expiration of the Initial Term, Provider shall give written notice to Purchaser of the availability of the Renewal Term, including the kWh Rate that would be applicable during the Renewal Term. Purchaser shall have ninety (90) days to agree to the continuation of the Agreement for the Renewal Term. Absent agreement

to the Renewal Term this Agreement shall expire on the Expiration Date. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the "Term."

2.2 Early Termination By Provider. In the event that any of the following events or circumstances occur, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) Prior to the commencement of the Installation Work, there exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date, after undertaking commercially reasonable due diligence, that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(b) Prior to the commencement of the Installation Work, there is a change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to materially adversely affect the economics of the installation for Provider and its investors.

(c) Prior to the Commercial Operation Date, despite commercially reasonable efforts, Provider is unable to obtain financing for the System on terms and conditions reasonably satisfactory to it.

(d) Prior to the commencement of the Installation Work, despite commercially reasonable efforts, Provider is unable to secure planning permissions and other Governmental Approvals necessary to construct the System on the Premises.

(e) Prior to the Commercial Operation Date, there has been a Material Adverse Change in Purchaser's credit-worthiness.

(f) Prior to the Commercial Operation Date, Provider has been unable to obtain the necessary government land use permits and/or approvals for the System, including but not limited to any state, local or federal permits that may be required to operate the System on the Premises despite the commercially reasonable efforts of Provider to obtain such permits and approvals.

2.3. Early Termination by Purchaser. In the event that any of the following events or circumstances occur, Purchaser may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination:

(a) In the event that Provider has not submitted to the Local Electric Utility, within forty-five (45) days of the Effective Date, a complete interconnection application seeking authorization to interconnect the System to the Local Electric Utility System;

(b) In the event that Provider has not submitted applications for zoning and other local land use permits and approvals, within sixty (60) days after the Effective Date.

(c) In the event that Provider has not commenced construction of the System by June 30, 2018.

(d) In the event that the Commercial Operation Date shall not have occurred by December 31, 2018.

2.4 Non Appropriation. Subject to Section 8.2(b)(i), Purchaser's liability for payments hereunder is conditioned upon appropriations from the Board of Finance. As provided in Section 8.2(b)(iii), the Purchaser agrees to use its best efforts to obtain appropriations necessary to make such payments. However, in the event the Board of Finance ceases to provide funds for the continuation of payments, this Agreement shall terminate within thirty (30) days of written notice to Provider, without any further obligations of Purchaser and without penalty including any payment of liquidated damages as set forth in paragraph 11.2(b).

### 3. CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1 hereto and Applicable Law.

3.2 Approvals; Permits. Purchaser shall reasonably cooperate with Provider (without the expenditure of monies) in obtaining all necessary approvals and permits including but not limited to those related to the Local Electric Utility or any Governmental Authority.

#### 3.3 System Acceptance Testing.

(a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Provider shall inform Purchaser when the testing is scheduled to take place and will allow for Purchaser or Purchaser's representative to observe testing.

(b) Commercial Operation shall occur when the results of such testing indicate that the System is capable of generating electric energy for six (6) continuous hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the Local Electric Utility, then Provider shall send a written notice and supporting documentation to Purchaser to that effect, and the date of such notice shall be the Commercial Operation Date.

### 4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense;

4.2 Metering. The Local Electric Utility will install and maintain a meter, referred to as the "Net Energy Meter", which will measure the net amount of electrical energy flowing to and from the Premises, or Net Metered Production.

4.3 Meter Accuracy. On behalf of Purchaser as the Local Electric Utility's customer of record, Provider may, on its own initiative, and shall upon the request of the Purchaser, exercise Local Electric Utility customer rights to arrange for testing of the accuracy of the Net Energy Meter.

### 5. DELIVERY OF NET METERED PRODUCTION.

5.1 Purchase Requirement. Purchaser agrees to purchase the Net Metered Production generated by the System during each relevant month of the Term, whether or not Purchaser is able to use any of such Net Metered Production.

5.2 Estimated Annual Production. The annual estimate of electricity generated by the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Initial Term is set forth in Schedule 4 hereto. Purchaser



acknowledges and agrees that the Net Metered Production could exceed the Estimated Annual Production in any given year and Purchaser shall still be responsible for purchases above the Estimated Annual Production.

5.3 Environmental Attributes and Solar Incentives. Purchaser's purchase does not include Environmental Attributes, Capacity Benefits or Solar Incentives, each of which shall be owned by Provider or Provider's Financing Party for the duration of the System's operating life. Purchaser disclaims any right to Solar Incentives, Capacity Benefits or Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request of Provider, execute any document or agreement reasonably necessary to fulfill the intent of this Section 5.3. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Purchaser and Provider agree that Purchaser shall be entitled to make the claims and statements in the form of, and substantially similar to, those set forth in **Schedule 8 ("Purchaser Public Statements")**. If Purchaser seeks to make a claim or statement that is materially different from the Purchaser Public Statements, Purchaser shall submit to Provider for approval any press releases regarding Purchaser's use of solar or renewable energy from the System and shall not submit for publication any such releases without the prior written approval of Provider, which shall not be unreasonably withheld or delayed. Without limiting Provider's other rights hereunder, in the event that Purchaser breaches its obligations under this Section 5.3 and has been notified by Provider of such breach and afforded a reasonable opportunity to cure such breach (not to exceed 30 days) and, as a result thereof, the value of the Environmental Attributes generated by the System is reduced, as a direct and proximate result of Purchaser's statement, Purchaser shall pay to Provider the value of such reduction.

5.4 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party

5.5 Net Energy Metering. The Parties will work cooperatively and in good faith to meet all Net Energy Metering requirements under Applicable Law and Local Electric Utility tariffs, including applicable interconnection and metering requirements. The Parties agree that (a) Provider shall transmit such Net Metered Production into the Local Electric Utility system on behalf of and for the account of Purchaser, and (b) Purchaser (or its designee) shall be entitled to any and all Virtual Net Metering Credits issued by the Local Electric Utility resulting from such transmission.

## 6. PRICE AND PAYMENT.

6.1 Consideration. Purchaser shall pay to Provider a monthly payment (the "Payment") for the Net Metered Production during each monthly Billing Cycle of the Term equal to the product of (x) the Net Metered Production for the relevant month multiplied by (y) the kWh Rate for such month.

6.2 Purchaser Shortfall Credit/Payment. (a) Subject to Section 10.1, if the Guaranteed Annual Output is not met in any rolling, three-year period after the Commercial Operation Date, then Provider shall, credit to Purchaser on future Payments (see Section 6.1), 20% of an amount equal to the product of the (i) Production Shortfall multiplied by (ii) the average Virtual Net Metering Credit Rate for said period (the "Shortfall Credit").

It is the intention of the parties that in the event the Guaranteed Annual Output is not met in any rolling three year period, that the Provider shall credit or pay to the Purchaser an amount sufficient to make the Purchaser whole and, to that end, if the Production Shortfall would not have been eligible for Net Energy Metering, no credit shall be given under this Section 6.2.

(b) If any Shortfall Credit shall remain at the end of the Term, such Shortfall Credit shall be payable in cash within 30 days of the end of the Term.

(c) Notwithstanding the foregoing, within six (6) months prior to the end of the Term, the parties shall in good faith determine whether the size of the Shortfall Credit at the time requires an accelerated payment mechanism in advance of the end of the Term based on such factors as the size of the Shortfall Credit, current rates and remaining expected production.

6.3 Invoice. Purchaser shall provide Provider with access to its online statements from the Local Electric Utility in Purchaser's capacity as Customer-Generator of the System. Within 5 days of the online posting of such statements by the Local Electric Utility, Provider shall invoice Purchaser (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement."

6.4 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within the time specified in Schedule 6 hereto.

6.5 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. If Purchaser does not have electronic funds transfer capability, the Parties shall agree to an alternative method of payment. All payments that are not paid when due and not disputed shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 6.6 below, all payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.6 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. If an amount disputed by Purchaser is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date becoming past due under such invoice until the date paid.

6.7 Billing Adjustments Following Local Electric Utility Billing Adjustments. If, as a result of a Local Electric Utility billing adjustment to correct an inaccuracy of the Net Energy Meter, the quantity of Net Metered Production is decreased (the "Electricity Deficiency Quantity") and the Local Electric Utility reduces the amount of Virtual Net Metering Credits awarded for such period, Provider shall reimburse Purchaser for the amount paid by Purchaser in consideration for the Electricity Deficiency Quantity. If the quantity of Net Metered Production is increased (the "Electricity Surplus Quantity") and the Local Electric Utility increases the amount of Net Metering Credits for such period, Purchaser shall pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period.

## 7. GENERAL COVENANTS.

7.1 Provider's Covenants. Provider covenants and agrees to the following:

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

(b) System Condition. Provider shall operate, maintain and repair the System in a good and workmanlike manner and shall take all actions reasonably necessary to ensure that the System is capable of generating the Guaranteed Annual Output and operating at a commercially reasonable continuous rate.

(c) Governmental Approvals. While providing the Installation Work and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to

be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.

(d) Interconnection Fees. Provider shall be responsible for all costs, fees, charges and obligations required to connect the System to the Local Electric Utility distribution system, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("Interconnection Obligations"). In no event shall Purchaser be responsible for any Interconnection Obligations.

(e) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work and System Operations and shall comply with all Applicable Laws pertaining to environmental protection and the health and safety of persons and real and personal property. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by photovoltaic solar system integrators in the United States. Provider shall obtain and maintain appropriate general liability, property and worker's compensation insurance as required by law.

(f) Compliance with Applicable Law. Purchaser and Provider shall comply with all Applicable Laws that apply to them in connection with their performance under the Agreement and the transactions contemplated hereby, including, without limitation, the Net Metering Rules, during the Initial Term and any subsequent term.

(g) Property Rights. Provider shall ensure that the Lease is maintained in good standing for the Initial Term and any Extended Term and that Provider, or its Assigns, shall have the right to install, maintain and access the System and otherwise fulfill its obligations under this Agreement during the Initial Term and any Extended Term.

7.2 Purchaser's Covenants. Purchaser covenants and agrees to the following:

(a) Purchaser shall provide to Provider such documentation (including billing statements from the Local Electric Utility), as may be reasonably requested by Provider for the purposes of the Parties fulfilling their mutual obligations under this Agreement.

(b) Customer-Generator. Purchaser shall execute documents to designate Purchaser as the customer of record for the Local Electric Utility meter in connection with the System and otherwise establish Purchaser as the beneficiary of Virtual Net Metering Credits from the System for purposes of the Local Electric Utility.

(c) Consents and Approvals. Purchaser shall ensure that any authorizations required of Purchaser under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall cooperate with Provider to obtain such approvals, permits, rebates or other financial incentives.

(d) Virtual Net Metering Services Agreement. Purchaser shall comply with its obligations under, and shall maintain in full force and effect, the Virtual Net Metering Service Agreement. Purchaser shall not amend, supplement or otherwise modify or vary the terms of, or sell, assign or otherwise dispose of any part of its interest in, the Virtual Net Metering Service Agreement without the prior written consent of Provider and Provider's Financing Party.

## 8. REPRESENTATIONS, WARRANTIES & ACKNOWLEDGEMENTS.

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

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

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement;

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

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

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

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

### 8.2 Representations, Warranties and Acknowledgements of Purchaser.

(a) Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants to Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement.

Any Financing Party shall be an intended third-party beneficiary of this Section 8.2.

(b). Purchaser acknowledges the essential nature of the services being provided under this Agreement and in connection therewith, represents, warrants and covenants that:

(i) that existing appropriations exist with respect to all payments required hereunder during Purchaser's current fiscal year.

(ii) it has fully complied with all procurement, public bidding and municipal contracting requirements under Applicable Law in order to enter into this Agreement; and

(iii) in the event any payment hereunder (including any Estimated Remaining Payments) is or becomes subject to any necessary appropriation, Purchaser shall use its best efforts to appropriate the funds necessary to satisfy such obligations.

8.3 Representations and Warranties and Acknowledgements of Provider. Provider represents and warrants that it has, or the lessor of the Premises has, caused a Phase I Environmental Site Assessment pursuant to ASTM E1527, and a Phase II Environmental Site Assessment pursuant to ASTM E1903, if recommended by the Phase I, to be undertaken by a consultant licensed to practice in the State of Connecticut, which assessments have concluded that the Premises does not contain and there has not been a release, seepage, emission, migration, or spill or a Hazardous Material that requires clean-up or remediation pursuant to Applicable Law and that the Premises is not an "establishment" under the Connecticut Transfer Act, Sections 22a-134 through 22a-134e of the Connecticut General Statutes (CGS), as amended by Public Acts 09-235 and 09-3.

## 9. TAXES AND GOVERNMENTAL FEES.

9.1 Provider Obligations. Provider shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System. Provider shall not be obligated for any taxes payable by or assessed against Purchaser based on or related to Purchaser's overall income or revenues.

## 10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement); A Force Majeure Event shall not be based on the economic hardship of either Party, a change in law or the action or inaction by a Governmental Authority.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall immediately (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (d) resume performance of its obligations hereunder as soon as practicable thereafter; provided, however, that neither Purchaser nor Provider shall be excused from making any payments and/or Shortfall Credits or paying any unpaid amounts due in respect of Virtual Net Metering Credits delivered to Purchaser prior to the Force Majeure Event performance interruption.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected either Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the Party not claiming the Force Majeure shall be entitled to terminate the Agreement upon sixty (60) days' prior written notice to the other Party. If at the end of such sixty (60) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination).

## 11. DEFAULT.

### 11.1 Provider Defaults and Purchaser Remedies.

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

- (i) A Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay or credit Purchaser any undisputed amount owed under the Agreement within thirty (30) days from receipt of notice from Purchaser of such past due amount; and
- (iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Purchaser's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and pursue a cure within such thirty (30) day period if a longer cure period is needed.
- (iv) Subject to Section 10.1, if 75% of the Guaranteed Annual Output is not met in any rolling, three-year period after the Commercial Operation Date, provided that Provider and/or the Financing Party shall have the right to cure by paying Purchaser the Shortfall Credit determined in paragraph 6.2 hereof within 30 days of the applicable measurement date.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement immediately and exercise any other remedy it may have at law or equity or under the Agreement.

### 11.2 Purchaser Defaults and Provider's Remedies.

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

- (i) A Bankruptcy Event shall have occurred with respect to Purchaser;
- (ii) Purchaser breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Purchaser fails to so cure, or (B) Purchaser fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and
- (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount.

(b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, Purchaser shall pay the Estimated Remaining Payments as liquidated damages and Provider may exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Provider shall use reasonable efforts to mitigate its damages.

The Parties agree that it would be extremely difficult to determine precisely the amount of actual damages that would be suffered by Provider due to the termination of this Agreement due to a Purchaser Default, but that liquidated damages set forth in this Section 11.2(b) (the "Liquidated Damages") are a fair and

reasonable determination of the amount of actual damages that would be suffered by Provider for the applicable deficiency, and that these Liquidated Damages and other amounts do not constitute a penalty. Purchaser hereby expressly waives any defense or right to contest the validity of these Liquidated Damages on the grounds that they are void as penalties or are not reasonably related to actual damages

## 12. LIMITATIONS OF LIABILITY.

12.1 Except as expressly provided herein, neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, losses or damages for lost revenue or lost profits, whether foreseeable or not, arising out of, or in connection with the Agreement.

12.2 A Party's maximum liability to the other Party under the Agreement, shall be limited to the aggregate Estimated Remaining Payments as of the date of the events giving rise to such liability, provided, however, the limits of liability under this Section 12.2 shall not apply with respect to indemnity obligations hereunder in respect of personal injury.

## 13. ASSIGNMENT.

13.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an "Assignment") the Agreement or any interest therein, without the prior written consent of Purchaser, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Purchaser, Provider may (a) assign this Agreement to an Affiliate provided such assignment occurs no later than 90 days after the Commercial Operation Date, and that Affiliate has the financial wherewithal and ability to perform Provider's obligations at least equal to Provider; (b) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction). In the event that Provider identifies such secured Financing Party in Schedule 5 hereto, or in a subsequent notice to Purchaser, then Purchaser shall comply with the provisions set forth in Exhibit C hereto. In the event that Provider identifies the Financing Party as Huntington National Bank, then Purchaser agrees to execute the Consent and Agreement attached as Exhibit D. Any Financing Party shall be an intended third-party beneficiary of this Section 13.1. Any assignment by Provider without any required prior written consent of Provider shall not release Purchaser of its obligations hereunder.

13.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party in Schedule 5 hereto, or in a subsequent notice to Purchaser, then Purchaser hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider's right, title and interest in, to and under the Agreement, as consented to under Section 13.1 of the Agreement.

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in this Agreement.

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party, as agreed in this Agreement, in accepting such security interest as collateral for its financing of the System.

Any Financing Party shall be an intended third-party beneficiary of this Section 13.2. Further, Purchaser shall, upon the request of Provider or any Financing Party, provide a signed acknowledgement and confirmation for the benefit of the Financing Party, substantially in the form as Provider or the Financing Party may reasonably request, which acknowledgment and confirmation shall certify, to the extent true and correct, that to the best of Purchaser's knowledge, (1) this Agreement is in full force and effect, (2) no modifications have been made, (3) no disputes or defaults exist, (4) no events have occurred that would,

with the giving of notice or the passage of time, constitute a default under this Agreement, (5) all amounts then due and owing have been paid, and (6) the Commercial Operation Date has occurred.

13.3 Assignment by Purchaser. Purchaser shall not assign the Agreement or any interest therein, without Provider's and Financing Party's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, except that Provider and Financing Party each reserve the right in its sole discretion to reject the assignment of this Agreement by the Purchaser to any party that does not have a credit rating equal to or better than the Purchaser. Any assignment by Purchaser without the prior written consent of Provider and Financing Party shall not release Purchaser of its obligations hereunder.

#### 14. NOTICES.

14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 5 hereto, or at such other address as may be designated in writing to the other Party from time to time.

14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. mail.

14.3 Address for Invoices. All invoices under the Agreement shall be emailed to: GCONRAD@westportct.gov.

#### 15. CONFIDENTIALITY.

15.1 Confidentiality Obligation. If either Party provides information that is expressly identified as confidential information, such as business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the System, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Further either party may disclose such Confidential Information as required by law, including, but not limited to, the Freedom of Information Act. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.

15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:



- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. Except for the Purchase Public Statements, the Parties shall use reasonable efforts to coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review any publicity materials or press releases by the other Party that refer to, or that describe any aspect of, the Agreement. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser permission and the installation site shall not be disclosed beyond the type of establishment (such as "Retail Store," "Distribution Center," or such other general terms), the city and state.

Notwithstanding the foregoing, Provider acknowledges that Purchaser is a public agency. Approval of this Agreement and statements regarding all aspects of this Agreement will be expressed in a public forum and subject to public comment.

15.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Article by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

## 16. INDEMNITY.

16.1 Indemnity. Subject to Section 12, to the extent permitted by Applicable Law, Provider agrees that it shall indemnify, defend and hold harmless the Purchaser, its permitted successors and assigns and its directors, officers, members, shareholders and employees) from and against any and all Losses incurred by the Purchaser to the extent arising from or out of or related to the following: (a) any material breach of this Agreement by Provider; (b) violation of Applicable Law by the Provider, including without limitation actions or omissions of the Provider in conflict with applicable regulations governing the Interconnection Obligations or the Connecticut VNM Regulations; (c) the negligence, recklessness, willful misconduct, or fraud of the Provider; (d) any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of the Provider's negligence or willful misconduct or (e) any infringement of patents or the improper use of other proprietary rights by the Provider or its employees or representatives. Provider, however, Provider will not be required to reimburse or indemnify the Purchaser for any Loss to the extent such Loss is due to Purchaser's negligence or willful misconduct.

16.2 Purchaser shall inform the Provider of any claim for which it intends to invoke indemnification and, at Provider's request and reasonable expense, reasonably cooperate with Provider in defending such claim. The Provider shall assume, at its cost and expense, the defense of such claim through its legal counsel selected and reasonably acceptable to the Purchaser, except that the Purchaser may at its option and expense select and be represented by separate counsel. Provider shall have control over the suit or proceedings, including the right to settle; provided, however, the Provider will not, absent the written consent of the Purchaser, consent to the entry of any judgment or enter into any settlement that (1) provides for any relief other than the payment of monetary damages for which the Provider shall be solely liable and (2) does not release the Purchaser, from all liability in respect thereof. In no event shall the Purchaser be liable for any claims that are compromised or settled in violation of this Section.

## 17. DISPUTE RESOLUTION.

17.1 Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

17.2 Mediation. If, after such negotiation in accordance with Section 17.1, the Dispute remains unresolved, either Party may require that a non-binding mediation take place. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to pursue its legal remedies in the appropriate forum. If a mediation takes place, the mediator's fee and expenses shall be paid equally by each Party.

## 18. MISCELLANEOUS.

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

18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser.

18.3 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement, the normal standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

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

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

18.6 Survival. The obligations under Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.

18.7 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Connecticut without reference to any choice of law principles. The Parties agree that the State and Federal courts in Connecticut shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law.

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

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

18.10 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Purchaser and their respective successors and permitted assigns.

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

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

***[Remainder of page intentionally left blank.]***

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

“PURCHASER”: TOWN OF WESTPORT

By:  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

“PROVIDER”: PLAINFIELD SOLAR 2 LLC, a Connecticut limited liability company

By: \_\_\_\_\_  
Name: Christopher Little  
Title: Vice President  
Date: \_\_\_\_\_

**EXHIBIT A**  
**COMMERCIAL GUARANTY**

**Provider:** Plainfield Solar 2 LLC  
c/o Ecos Energy LLC  
222 S. 9<sup>th</sup> St, Suite 1600  
Minneapolis, MN 55402

**Purchaser:** The Town of Westport, Connecticut  
110 Myrtle Avenue  
Westport, CT 06880

**Guarantor:** Allco Finance Limited  
1740 Broadway, 15<sup>th</sup> Floor  
New York, NY 10019

**GUARANTEE.** For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of all amounts due (the "Indebtedness") from Provider to Purchaser under that certain Solar Power Services Agreement Between Provider and Purchaser dated as of July \_\_, 2019 (the "Agreement"), and the performance and discharge of all of Provider's obligations thereunder. This is a guaranty of payment and performance and not of collection, so Purchaser can enforce this Guaranty against Guarantor even when Purchaser has not exhausted Purchaser's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Purchaser on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Provider's obligations under the Agreement.

Guarantor acknowledges receipt of good and valuable consideration for the making of this Guaranty.

Under this Guaranty, Guarantor's obligations are continuing and shall not be affected by the bankruptcy or other insolvency of the Provider or by a modification, termination or expiration of the Agreement.

**AMENDMENTS.** This Guaranty, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration of or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

**GOVERNING LAW.** This Guaranty will be governed by federal law applicable to Purchaser and, to the extent not preempted by federal law, the laws of the State of Connecticut without regard to its conflicts of law provisions.

**NOTICES.** Any notice required to be given under this Guaranty shall be given in writing, and, except for revocation notices by Guarantor, shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty.

**SEVERABILITY.** If any term, provision or condition of this Guaranty shall be invalid, illegal or unenforceable in any respect, the remainder of this Guaranty shall be construed without the same and the application of such term, provision or condition to persons or circumstances other than those as to which it is held invalid, illegal or unenforceable, as the case may be, shall not be affected thereby, and each term, provision and condition of this Guaranty shall be valid and enforced to the fullest extent permitted by law.

**GUARANTOR:**

**ALLCO FINANCE LIMITED**

By: /s/ \_\_\_\_\_  
Thomas Melone

**EXHIBIT B**

**VIRTUAL NET METERING SERVICE AGREEMENT**

**Exhibit C**  
**of General Conditions**

**Certain Agreements for the Benefit of the Financing Parties**

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

(a) Consent to Collateral Assignment. Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement.

(b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of the Provider default. No such notice will be effective absent delivery to the Financing Party. Purchaser will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:

i. If Provider defaults in the performance of any of its obligations under the Agreement, or upon the occurrence or non-occurrence of any event or condition under the Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, constitute a Provider Default or enable Purchaser to terminate or suspend its performance under the Agreement (a "Default or Termination Event"), Purchaser will not terminate or suspend its performance under the Agreement until it first gives written notice of such Default or Termination Event to Financing Party and affords Financing Party the right to cure such Default or Termination Event within the applicable cure period concurrent with that afforded Provider under the Agreement ("Cure Period").

ii. In addition, if Financing Party gives Purchaser written notice prior to the expiration of the Cure Period of Financing Party's intention to cure such Default or Termination Event (which notice shall include a reasonable description of the time during which it anticipates to cure such Default or Termination Event) and is diligently proceeding to cure such Default or Termination Event, notwithstanding the applicable Cure Period, Financing Party shall have a period of sixty (60) days (or, if such Default or Termination Event is for failure by the Provider to pay an amount to Purchaser which is due and payable under the Agreement, thirty (30) days) from the expiration of the applicable Cure Period to cure such Default or Termination Event, provided, however, that (a) if possession of the Project is necessary to cure any such non-monetary Default or Termination Event and Financing Party has commenced foreclosure proceedings within sixty (60) days after notice of such Default or Termination Event and is diligently pursuing such foreclosure proceedings, Financing Party will be allowed a reasonable time, not to exceed one hundred eighty (180) days, to complete such proceedings and cure such Default or Termination Event, and (b) if Financing Party is prohibited from curing any such Default or Termination Event by any process, stay or injunction issued by any Governmental Authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Provider, then the Cure Period specified herein shall be extended for the period of such prohibition, so long as Financing Party is diligently pursuing removal of such process, stay or injunction. Financing Party shall provide Purchaser with reports concerning the status of efforts to cure a Default or Termination Event upon Purchaser's reasonable request.

**EXHIBIT D**  
**FORM OF CONSENT AND AGREEMENT**

CONSENT TO COLLATERAL ASSIGNMENT

This Consent to Collateral Assignment (the “Consent”) is by and among the Town of Westport, Connecticut (“Purchaser”), a Connecticut municipality, Plainfield Solar 2 LLC, a Connecticut limited liability company (“Provider”), and The Huntington National Bank, a national banking association as collateral agent for the benefit of AFL-HBAN Solar Trust (“Lessor”) under the Sale Leaseback Financing (as herein after defined) (in such capacity, “Financing Party”).

**RECITALS**

A. Purchaser and Provider have entered into (i) that certain Solar Power Services Agreement, dated as of \_\_\_\_\_, 201\_\_ with respect to the photovoltaic generating system (“System”) (the “Agreement”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

B. Financing Party, Lessor and Provider will enter into a sale leaseback financing transaction (the “Sale Leaseback Financing”) with respect to the System under which title to the System will pass from Provider to Lessor.

C. In connection with the Sale Leaseback Financing, (i) Provider will grant to Financing Party a security interest in Provider’s right, title and interest in, to and under the Agreement, including without limitation the payments due by Purchaser thereunder from time to time, all rights of Provider to receive proceeds of any insurance, indemnity, warranty, or guaranty with respect to or for breach of or default under the Agreement, claims of the Provider for damages arising out of or for breach of or default under the Agreement, and the right of the Provider to terminate the Agreement, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder, pursuant to one or more a security agreements to be entered into by and between Provider and Financing Party (the “Collateral Assignments”), and (ii) the direct parent of Provider may pledge to the Financing Party the membership interests of Provider pursuant to one or more a pledge agreements to be entered into by and between the direct parent of Provider and Financing Party (together with the Collateral Assignment, the “Pledge”).

**Agreement**

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree, notwithstanding anything in the Agreement to the contrary, as follows:

1. Provider hereby notifies Purchaser of the Sale Leaseback Financing and the Pledge, and designates Financing Party as a “Financing Party” as such term is defined in each Agreement.
2. Purchaser hereby consents to and acknowledges the security interests granted or to be granted by the Sale Leaseback Financing and the Pledge, and acknowledges and agrees that Financing Party is entitled to the benefits provided with respect to a “Financing Party” as such term is defined in the Agreement, including without limitation the provisions of Article 13 and Exhibit A of the Agreement.
3. Without limiting the provisions of Article 13 and Exhibit A of each Agreement, Purchaser agrees that it will not, without the prior written consent of Financing Party (a) enter into any material supplement, restatement, novation, extension, amendment or modification of the Agreement or (b)



consent to or accept any termination or cancellation of any of the Agreement by Provider except that the Financing Party's consent shall not be required in the event of a termination under Section 2.4 of the Agreement..

4. Notices to Financing Party shall be delivered to the following address, as the same may be updated from time to time by written notice to Purchaser.

Huntington Equipment Finance Purchaser Service  
The Huntington National Bank  
Equipment Finance Division  
Huntington Center  
525 Vine Street, 14th Floor CN200C  
Cincinnati, OH 45202  
[HBEF.Service@huntington.com](mailto:HBEF.Service@huntington.com)  
(866)329-7286

5. Purchaser represents, warrants and acknowledges to and for the benefit of Financing Party and Provider that as of the date hereof (i) the Agreement is in full force and effect, (ii) there exists no event or condition which constitutes a Default under the Agreement or gives rise to a right to terminate the Agreement, or that would, with the giving of notice or lapse of time, or both, constitute a Default under the Agreement or give rise to a right to terminate the Agreement, (iii) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein, and (iv) except for the Collateral Assignment, Purchaser has no notice of any assignment relative to any right, title and interest of Provider in, to and under the Agreement.
6. Promptly upon the request of Financing Party or Provider, and in any case within five (5) Business Days of such request, Purchaser covenants and agrees to provide a bring-down of the representations, warranties and acknowledgments set forth in Section 5 hereof in the form attached hereto as Exhibit A, to the extent such representations, warranties and acknowledgments remain true and correct as of such date.
7. Until Purchaser shall have received written notice from Financing Party that the Pledge has been discharged pursuant to the terms thereof, the Purchaser hereby acknowledges that Financing Party has the right to further redirect all payments and amounts the Purchaser is obligated to pay under the Agreement as Financing Party may direct in writing (each such direction, a "Redirect Notice"). Provider hereby irrevocably instructs Purchaser, and Purchaser hereby agrees, to make all payments and transfer all amounts Purchaser is obligated to pay or transfer under the Agreement on and after the effective date of a Redirect Notice to the account or address specified and in accordance with the directions set forth in the Redirect Notice from Financing Party.
8. Until Purchaser shall have received written notice from Financing Party that the Pledge has been discharged pursuant to the terms thereof, following the termination of the Agreement, Purchaser agrees that notwithstanding Section 11.2(b)(iii) of such terminated Agreement, none of Provider, Financing Party or the respective assignees or designees of the foregoing shall be required to enter into any contract with any New User that fails to satisfy Financing Party's internal requirements with respect to "know-your-customer" rules, anti-money laundering and other then-applicable legal

and regulatory compliance policies and procedures, and its then-applicable credit policies, in each case as consistently applied by Financing Party.

9. Purchaser acknowledges and agrees that it has elected not to terminate the Agreement pursuant to Section 2.3 of the Agreement, and hereby waives any such termination rights.
10. Without limiting the Financing Party's rights under Article 13 and Exhibit C of the Agreement, Financing Party shall have the right but not the obligation to cure any Default or Termination Event (as defined in Exhibit C to the Agreement) resulting from any rejection, revocation, or termination of the guaranty delivered by Allco Finance Limited in connection with the Agreement, by providing substitute credit support in the form of either (i) a guaranty from an Investment Grade Person, or (ii) a letter of credit from a U.S. commercial bank (or the U.S. branch of a foreign commercial bank) that maintains a credit rating of at least "A-" by Standard & Poor's Rating Services or its successor ("Standard and Poor's"), or "A3" by Moody's Investors Service, Inc. or its successor ("Moody's"), in each case in an amount equal to the difference between the Purchaser's cost to cover and the contact price over the then-remaining term of the Agreement (as reasonably determined by Purchaser and Financing Party in accordance with Section 2-712(2) of the Connecticut Uniform Commercial Code). "Investment Grade" shall mean in the case of a Person, that such Person's long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) are rated (i) "Baa3" or higher by Moody's, or (ii) "BBB-" or higher by Standard and Poor's.
11. Each of Purchaser and Provider represents and warrants for the benefit of each other party to this Consent that (i) it is duly organized and validly existing under the laws of the state of its organization, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which the nature of its business requires it to be so qualified, (ii) it has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby, and (iii) the execution, delivery and performance of this Consent by such party have been duly authorized by all necessary corporate or other action on the part of such party.
12. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party hereto claimed to have so waived or excused.
13. There are no third party beneficiaries to this Consent.
14. The invalidity or unenforceability of any provision of this Consent shall not affect the validity or enforceability of any other provision of this Consent, which shall remain in full force and effect.
15. This Consent may be executed in one or more counterparts, each of which will be deemed to be an original of this Consent and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Consent and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Consent as to the parties and may be used in lieu of the original Consent for all purposes.
16. This Consent may be modified, amended or rescinded only by an instrument in writing signed by all parties hereto.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the undersigned have executed this Consent as of that date and year first written above.

**TOWN OF WESTPORT:**

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

Name: \_\_\_\_\_

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

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

**PLAINFIELD SOLAR 2 LLC:**

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

Name: \_\_\_\_\_

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

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

**THE HUNTINGTON NATIONAL BANK,**

as Collateral Agent

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

Name: \_\_\_\_\_

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

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

[Signature Page to Consent to Collateral Assignment]

Exhibit A – Form of Bring-Down Certificate

[INSERT DATE]

Huntington Equipment Finance Purchaser Service  
The Huntington National Bank  
Equipment Finance Division  
Huntington Center  
525 Vine Street, 14th Floor CN200C  
Cincinnati, OH 45202  
[HBEF.Service@huntington.com](mailto:HBEF.Service@huntington.com)  
(866)329-7286

RE: Bring-Down of Representations and Warranties – Plainfield Solar 2  
Project

Ladies and Gentlemen:

Reference is made to (i) that certain Solar Power Services Agreement, dated as of \_\_\_\_\_, 202\_\_ with respect to the photovoltaic generating system connected to meter number \_\_\_\_\_, (the “Agreement”), and (ii) that certain Consent to Collateral Assignment (the “Consent”) by and among the Town of Westport, Connecticut (“Purchaser”), a Connecticut municipality, Plainfield Solar 2 LLC (“Provider”), and The Huntington National Bank, a national banking association as collateral agent for the benefit of AFL-HBAN Solar Trust (“Financing Party”). Capitalized terms used but not defined herein shall have the meanings assigned in the Consent.

Pursuant to Section 6 of the Consent, Purchaser represents, warrants and acknowledges to and for the benefit of Financing Party and Provider that as of the date hereof (i) the Agreement and the Consent are in full force and effect, (ii) there exists no event or condition which constitutes a Default under the Agreement or gives rise to a right to terminate the Agreement, or that would, with the giving of notice or lapse of time, or both, constitute a Default under the Agreement or give rise to a right to terminate the Agreement, (iii) the Agreement has not been amended, modified or supplemented in any manner except as set forth herein, (iv) except for the Collateral Assignment, Buyer has no notice of any assignment relative to any right, title and interest of Seller in, to and under the Agreement, and (v) the Commercial Operation Date occurred on [ ].

**TOWN OF WESTPORT:**

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

Name: \_\_\_\_\_

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

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



**SCHEDULES**

**I. Schedule 1: Description of Premises and System**

**Solar System Premises:** 49 Plainfield Pike, Plainfield, CT

**Anticipated Subsidy**     **Rebate**     **or**     Zero Emission Renewable Energy Certificates

**Solar System Size:** 999 kW (AC) (representing an initial estimate, which may vary depending on the final design of the System)

**Scope:** Design and supply grid-interconnected, ground mounted solar electric (PV) system.

**Module:** LG 400W

**Inverter:** ABB 166.6 kW

**Description of Premises:**

That certain parcel of land situated on the southerly side of Connecticut Route 14A and the easterly side of the Connecticut Interstate 395 in the Town of Plainfield, County of Windham, and State of Connecticut known as Lot 37, Map 17/Block 36 as shown on a map entitled “Perimeter Survey Prepared For” Sheppard/Steuer Trust Plainfield Pike – Route 14A Plainfield, Connecticut Drawing Scale: 1” = 100’ Date: May 2015” which plan is recorded in the Plainfield Town Land Records.

**II. Schedule 2 – Estimated Remaining Payments.**

<b>Plainfield Solar 2 Project (Westport)</b>	
<b>Estimated Remaining Payments</b>	
<b>Termination Occurs at the end of Year:</b>	<b>Early Termination Fee</b>
<b>1</b>	\$2,915,780.61
<b>2</b>	\$2,762,945.13



<b>3</b>	\$2,610,873.82
<b>4</b>	\$2,459,562.88
<b>5</b>	\$2,309,008.49
<b>6</b>	\$2,159,206.87
<b>7</b>	\$2,010,154.26
<b>8</b>	\$1,861,846.91
<b>9</b>	\$1,714,281.10
<b>10</b>	\$1,567,453.11
<b>11</b>	\$1,421,359.27
<b>12</b>	\$1,275,995.90
<b>13</b>	\$1,131,359.34
<b>14</b>	\$987,445.97
<b>15</b>	\$844,252.16
<b>16</b>	\$701,774.32
<b>17</b>	\$560,008.87
<b>18</b>	\$418,952.25
<b>19</b>	\$278,600.92
<b>20</b>	\$138,951.33

**III. Schedule 3 –kWh Rate**

For each year of the system term as listed on Schedule 4, the kWh Rate with respect to the Systems under the Agreement for such year shall be **\$0.09 per kWh** for the Net Metered Production for such year up to the Estimated Production in kWhs for such year as listed on Schedule 4. For any Net Metered Production for such year that exceeds the Estimated Production in kWhs for such year, as listed on Schedule 4, the kWh Rate shall be the Excess Net Metering Credit for the electricity produced during such time.

**IV. Schedule 4 – Estimated Annual Production**

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

<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>	<b>Year of System Term</b>	<b>Estimated Production (kWh)</b>
1	1,698,172	11	1,615,149
2	1,689,681	12	1,607,073
3	1,681,233	13	1,599,037
4	1,672,827	14	1,591,042
5	1,664,462	15	1,583,087
6	1,656,140	16	1,575,172
7	1,647,859	17	1,567,296
8	1,639,620	18	1,559,459
9	1,631,422	19	1,551,662
10	1,623,265	20	1,543,904

The values set forth in the table above are estimates, of approximately how many MWhs are expected to be generated annually by the System. The table will be updated upon final design of the System.

**V. Schedule 5 – Notice Information**

**Purchaser:**

**First Selectman  
Town of Westport  
110 Myrtle Avenue**

**Provider:**

**Plainfield Solar 2 LLC  
% Thomas Melone  
1740 Broadway  
15<sup>th</sup> Floor**

Westport, CT 06880

With a copy to

Town Attorney,  
Town of Westport  
110 Myrtle Avenue  
Westport CT, 06880

New York, NY 100019

Phone: (212) 681-1120

E-mail: Thomas.Melone@allcous.com

With a copy to

Ecos Energy LLC  
% Chris Little  
222 S 9th St, Suite 1600  
Minneapolis, MN 55402  
Phone: (651) 268-2053  
E-mail: chris.little@ecosrenewable.com

**Financing Party:**

The Huntington National Bank  
Equipment Finance Division  
Huntington Center  
525 Vine Street, 14th Floor CN200C  
Cincinnati, OH 45202  
HBEF.Service@huntington.com  
(866)329-7286

**VI. Schedule 6 – Time of Payment**

Purchaser shall pay all undisputed amounts due hereunder within thirty (30) after the date of the applicable Invoice Date.

**VII. Schedule 7 – Initial Term**

The Initial Term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operations Date, unless and until terminated earlier pursuant to the provisions of the Agreement.

**VIII. Schedule 8 – Purchaser Public Statements**

- The Town of Westport is committed to its goal of NetZero 2050 which includes supporting the installation of a solar power installation that provides approximate 1500Mwh of energy to benefit the Town each year.
- Westport is supporting the addition of approximately 1500Mwh of clean energy to the grid, which is the equivalent of [#%] of the Town's annual electricity needs, powering facilities such as the fire and police departments, the sewer facilities plant, (BA-3 and BA-4) and Town Hall
- The environmental benefit of the project, which are in the form of Renewable Energy Certificates and represent the avoided carbon emissions are being sold to Eversource Energy
- Through this project the Town of Westport is also helping the State achieve our collective carbon reduction goal.



## Instruction

### Graduation Requirements

In order to satisfy the high school graduation requirements within the Westport Public Schools, a student must have satisfactorily completed his or her prescribed courses of study, demonstrated proficiency in basic skills identified by the Westport Board of Education and satisfied the legally mandated number and distribution of credits required to graduate from high school.

#### Required Coursework and Credits for Graduation

The Westport Board of Education conforms with state law regarding credits for graduation from high school.

#### Classes Graduating in 2018 to 2022

For classes graduating in 2018 to 2022, the following 25.0 credits are required:

<u>English</u>	<u>4.0</u>
<u>Mathematics</u>	<u>3.0</u>
<u>Science</u>	<u>2.0</u>
<u>Physical Education and Health</u>	<u>3.0</u>
<u>Social Studies</u>	<u>3.5</u>
<u>Arts</u>	<u>1.5</u>
<u>World Language</u>	<u>2.0</u>
<u>Electives</u>	<u>6.0</u>

#### Classes Graduating in 2023 and Thereafter

For classes graduating in 2023 and thereafter, the following 26.0 credits are required:

<u>Humanities</u>	<u>9.0</u>
<u>STEAM</u>	<u>9.0</u>
<u>Physical Education and Health</u>	<u>2.5</u>

World Languages 2.0

Mastery-Based Diploma Requirement 1.0

Electives 2.5

Any student who presents a certificate from a physician or advanced practice registered nurse stating that, in the opinion of the physician or advanced practice registered nurse, participation in physical education is medically contraindicated because of the physical condition of such student, shall be excused from the physical education requirement, provided the credit for physical education may be fulfilled by an elective.

Any student who is deaf or hearing impaired may be exempted from any world language graduation requirement if his or her parent or guardian requests such exemption in writing.

A credit is defined as the equivalent of one forty-minute class period for each school day of a school year. One-half credit is granted for a course with a forty-minute class period each school day for one semester or 90 days.

Only courses taken in grades nine to twelve inclusive, and that are in accordance with the state-wide subject matter content standards, adopted by the State Board of Education, shall satisfy the above graduation requirements, except that the Board will grant a student credit for the following:

High school graduation credit may be granted to high school students for coursework completed during the school year or summer months at an institution accredited by the Board of Regents for Higher Education or Office of Higher Education or that is regionally accredited, providing the course is pre-approved by the high school principal or his/her designee.

High school graduation credit will be granted to students upon the successful completion of online coursework in accordance with the Board's online coursework policy.

One-half credit in community service each school year which, if satisfactorily completed, shall qualify for high school graduation credit pursuant to this section, provided such community service is supervised by a certified school administrator or teacher and consists of not less than fifty hours of actual service that may be performed at times when school is not regularly in session. One-quarter credit in community service shall be awarded for 30 hours of community service. For purposes of this section, community service does not include partisan political activities. The State Board of Education shall award a community service recognition award to any student who satisfactorily completes fifty hours or more of community service in accordance with the provisions of this subsection.

#### Demonstration of Proficiency in Basic Skills

In addition to meeting the coursework and credit graduation requirements listed above, to graduate high school, each student must demonstrate proficiency in the basic skills.

Students may demonstrate proficiency in the basic skills described above by achieving satisfactory results on the following:

- State mandated requirements
- mastery examinations (but which cannot be the sole measure),
- standardized testing
- required grade 10 or 11 classes
- teacher review committee of student's body of work
- course requirements

### Graduation During Period of Expulsion

A student may graduate during an expulsion period if the Board determines that the student has completed the necessary credits required for graduation.

### Academic Advancement Program

Notwithstanding the graduation requirements in this policy, students shall be permitted to graduate from high school upon the successful completion of the academic advancement program established by the State Board of Education.

### Legal References:

Public Act 17-42, An Act Concerning Revisions to the High School Graduation Requirements

Conn. Gen. Stat. § 10-5c

Conn. Gen. Stat. § 10-14n

Conn. Gen. Stat. § 10-16b

Conn. Gen. Stat. § 10-221a

Conn. Gen. Stat. § 10-223a

### **Overview**

**~~To graduate from Staples High School, a student must meet the following requirements:~~**

- ~~Earn at least 25 credits distributed across certain subjects as stated in Appendix B.~~
- ~~Performance Standards~~

~~Students are required to satisfy district performance standards in the following areas as outlined in Appendix C, *Academic Expectations for Student Learning*:~~

- |                                 |  |
|---------------------------------|--|
| <del>a) Reading*</del>          | <del>f) Effective Speaking</del>             |
| <del>b) Writing*</del>          | <del>g) Effective Listening</del>            |
| <del>e) Problem Solving*</del>  | <del>h) Understanding Human Experience</del> |
| <del>d) Technology</del>        | <del>i) Physical Health</del>                |
| <del>e) Critical Thinking</del> | <del>j) Understanding Aesthetics</del>       |

~~Note: Problem solving is embedded in the mathematics and science courses, and incorporates mathematics standards and science standards.~~

~~\*Directly related to CAPT Standards~~

- ~~• Attain Goal on all Sections of the Connecticut Academic Performance Test (CAPT) or master specific skills in Grades 11 and 12 courses.~~

~~See Appendix D, Support for Student Achievement and Appendix E, Alternate Route to Meeting Graduation Requirements.~~

Policy adopted: March 13, 2006  
Revised:

WESTPORT PUBLIC SCHOOLS  
Westport, Connecticut

**P6146**  
**Appendix B**

## ~~CLASS OF 2010 AND BEYOND~~

### ~~STAPLES HIGH SCHOOL CREDIT AND DISTRIBUTION REQUIREMENT~~

<del>Area</del>	<del># of Credits</del>
<del><b>English (1.0 each year)</b></del>	<del>4.0</del>
<del>Distribution: As part of the English requirement, all students must complete and pass a major research paper (usually in the junior year) in one of the following courses:</del>	
<del><ul style="list-style-type: none"><li>English III</li><li>AP English Language</li><li>Effective Writing</li><li>Research and Understanding Literature</li></ul></del>	
<del><b>Social Studies (for classes of 2012, -2014)</b></del>	<del>3.5</del>
<del>Distribution:</del>	
<del><ul style="list-style-type: none"><li>Western Humanities _____ 1.0</li><li>U.S. History _____ 1.0</li><li>Area Studies _____ 0.5</li><li>American Government _____ 0.5</li><li>Additional Elective _____ 0.5</li></ul></del>	
<del>For class of 2015 and beyond: Area studies requirement will be replaced by World Studies requirement in 11<sup>th</sup> grade.</del>	
<del><b>Mathematics</b></del>	<del>3.0</del>
<del><b>Science</b></del>	<del>2.0</del>
<del><b>World Language (Any one world language, in sequence)</b></del>	<del>2.0</del>



<b>Physical Education and Health</b>	<b>3.0</b>
Distribution:	
• Freshman year	1.0
• Sophomore year	1.0
• Junior year	1.0
<b>Arts</b>	<b>1.5</b>
Distribution:	
(Minimum of 0.5 in fine arts and 0.5 in practical/human arts; remaining 0.5 in either area.)	
• Fine Arts: Art, Music, Theater	
• Practical Arts/Human Arts: Academic Support Classes, Advanced Journalism, Child Development, Child Study, Community Service, Computer Science, Culinary, Media, Relationships, Scientific Research, Technology Education	
<b>Electives</b>	<b>6.0</b>
<b>TOTAL</b>	<b>25</b>

Westport Board of Education: Approved March 13, 2006

**P6146**  
**Appendix C**

**ACADEMIC EXPECTATIONS: READING, WRITING & PROBLEM SOLVING**

**Students must demonstrate that they have achieved the following Academic Expectations:**

**A. Reading**

**Skills Required to Meet the Reading Standard**

- Identify main ideas, author's purpose and intended audience
- Locate supporting details
- Evaluate authenticity and reliability of sources
- Make connections within and among texts
- Formulate questions based on the text
- Develop interpretation of the text
- Evaluate the text

**B. Writing**

**Skills Required to Meet the Writing Standard**

- Write with clarity, organization and coherence
- Write for a variety of purposes and audiences
- Write with mechanical correctness
- Develop an idea completely
- Provide sufficient supporting details
- Use clear, correct and varied sentence structure
- Make appropriate word choices

**Skills must be demonstrated & Academic Expectations satisfied as follows:**

- (1) **Pass Prescribed Courses**

~~During the 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> grades, students must take and pass three English courses and two social studies courses (a Western Humanities and a U.S. History Course) which specifically require the above skills. The same courses will be used to assess the student's writing and interpretive reading skills.~~

~~All students are required to take a full year of English in grade 9 and grade 10. In each of those full year courses, students must earn a 3 or higher on a 4 point rubric on a minimum of four essays in order to pass the course. In the 11<sup>th</sup> grade, all students are required to take an English course in which they write a research paper, demonstrating the following skills, related both to reading and writing:~~

- ~~• Formulate a research question~~
- ~~• Collect and evaluate sources~~
- ~~• Use multi-media technology~~
- ~~• Read sources for main ideas and supporting details~~
- ~~• Take notes~~
- ~~• Develop a thesis~~
- ~~• Support thesis with credible evidence~~
- ~~• Synthesize information from various sources~~
- ~~• Create working draft~~

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**Appendix C**  
(continued)

- ~~• Revise and edit document~~
- ~~• Credit sources~~

~~Students must earn a 3 or higher on a 4 point rubric on the research paper in order to pass the English course in which it is written.~~

~~(2) **In addition, students must meet the state goal in reading and writing on the Connecticut Academic Performance Test (CAPT)**~~

~~A student who does not meet the goal in the sophomore year is strongly encouraged to retake the reading and/or writing sub-test as a junior (with additional assistance provided as needed) OR pass an additional post 10<sup>th</sup> grade *prescribed* Grade 11 or 12 English course for reading and a post 10<sup>th</sup> grade *prescribed* social studies course for writing. Demonstrating mastery on the CAPT means that the student achieves the state goal in reading and writing across the disciplines on the Connecticut Academic Performance Test.~~

~~If the student fails to achieve goal on the CAPT in *reading*, the student must take a post 10<sup>th</sup> grade *prescribed* course in which the student produces two major literary analysis essays during the 11<sup>th</sup> grade or the first semester of the 12<sup>th</sup> grade. If the student fails to achieve the CAPT goal in *writing*, the student must take a post 10<sup>th</sup> grade *prescribed* course in social studies during the 11<sup>th</sup> grade or the first semester of the 12<sup>th</sup> grade and produce two persuasive essays. The required performance tasks will be measured by applying the Staples High School rubrics for reading and writing respectively. The student must achieve a 3 or higher on the respective 4 point rubric to meet this graduation requirement.~~

## ~~C. Problem Solving~~

### ~~Skills Required to Meet the Problem Solving Academic Expectation~~

- ~~• Identify and define a problem~~
- ~~• Understand the relevant issues presented by a problem~~
- ~~• Identify and locate the relevant information needed to solve a problem~~
- ~~• Develop a logical approach leading to a valid conclusion~~
- ~~• Collect and analyze data~~
- ~~• Address all parts of a problem~~
- ~~• Clearly communicate the results~~

### ~~Academic Expectations satisfied as follows:~~

#### ~~(1) Pass prescribed courses.~~

~~Students must earn three math credits and two science credits during their four years at Staples. The problem solving academic expectation is embedded in these courses. In order to pass these courses, students must demonstrate proficiency in problem solving by attaining a score of 3 on the 4 point problem solving rubric.~~

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**Appendix C**  
(continued)

#### ~~(2) In addition, students must meet the state goal on the CAPT in~~

~~Mathematics and Science. (If a student does not meet the goal in the sophomore year the student is strongly encouraged to retake the mathematics and/or science sub-test as a junior. Additional assistance is provided as needed).~~

~~Mathematics: Students who fail to meet the CAPT goal in mathematics must demonstrate problem solving skill in a post 10<sup>th</sup>-grade third mathematics course. Students must attain a 3 or higher on a 4 point problem solving rubric in order to pass this course.~~

~~Science: Students who fail to meet the CAPT goal for science must take and pass any post 10<sup>th</sup>-grade science course in the first or second semesters of 11<sup>th</sup>-grade or the first semester of 12<sup>th</sup>-grade.~~

~~In order to satisfactorily complete a science course, a student must demonstrate proficiency in problem solving by completing a series of performance tasks within the course. Each of the performance tasks will consist of real world problems. The performance tasks will require students to attain a 3 or higher on a 4 point performance rubric which will require them to show their work or explain their reasoning, thereby communicating their understanding of the relevant scientific method.~~

~~D. Additional Academic Expectations (To satisfactorily meet these expectations, students must attain at least a 3 or higher on the 4-point rubric applicable to each skill)~~

~~(1) Students will think critically in a variety of contexts and situations.~~

~~To that end students will:~~

- ~~• Interpret, compare and contrast~~
- ~~• Apply knowledge in new contexts~~
- ~~• Generalize, predict and draw conclusions~~
- ~~• Analyze, evaluate and synthesize~~

~~Evidenced in English 1 and 2.~~

~~(2) Students will speak effectively.~~

~~To that end students will:~~

- ~~• Express ideas clearly~~
- ~~• Adjust tone and style for a variety of purposes and audiences~~
- ~~• Maintain eye contact during communication with other speakers~~
- ~~• Express informed and reasoned opinions when engaged in discourse~~
- ~~• Use appropriate language~~

~~Evidenced in American Government or Speech or a World Language course.~~

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**Appendix C**  
(continued)

~~(3) Students will listen effectively.~~

~~To that end students will:~~

- ~~• Listen for main ideas, principles and concepts~~
- ~~• Use constructive feedback to improve two-way communication skills~~
- ~~• Interpret and synthesize information conveyed by other speakers~~
- ~~• Demonstrate an openness to speakers with differing points of view~~

~~Evidenced in American Government~~

~~(4) Students will use technology as a tool for learning.~~

~~To that end students will:~~

- ~~• Use appropriate technology to research information~~
- ~~• Use technology to analyze data~~
- ~~• Use technology to communicate ideas and information~~
- ~~• Understand the strengths and weaknesses of various types of technology~~

~~(5) Students will demonstrate an understanding of the human experience through a study of history and diverse cultures.~~

~~To that end students will:~~

- ~~Demonstrate an awareness of various past and present political, social and economic systems.~~
- ~~Understand the concept and implications of ethnocentrism~~
- ~~Assess the impact of diverse ideologies on the human condition~~
- ~~Understand the significance of events and trends of the past and present~~

~~Evidenced in Western Humanities and U.S. History and any area studies course or World Language Course.~~

~~(6) **Students will recognize the importance of physical, mental and emotional health.**~~

~~To that end students will:~~

- ~~Develop skills necessary to perform a variety of physical activities~~
- ~~Participate regularly in practices and activities to help achieve and maintain physical, mental and emotional well being~~
- ~~Know how to cope, reduce tension and look for support~~

~~Evidenced in freshman, sophomore and junior PE and Health.~~

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**Appendix C**  
(continued)

~~(7) **Students will demonstrate awareness and a critical understanding of aesthetics.**~~

~~To that end students will:~~

- ~~Demonstrate the ability to work in an artistic medium~~
- ~~Demonstrate an understanding of the elements of the creative process~~
- ~~Demonstrate knowledge of the historical and cultural contexts in which art is created~~
- ~~Demonstrate an openness to the aesthetic experience~~
- ~~Demonstrate a knowledge of artists and their works~~

~~Evidenced in English 1 and Western Humanities or any Fine Arts course.~~

~~Westport Board of Education: Approved Oct. 12, 2004~~

### **Support For Student Achievement**

~~Students who fail to meet the academic expectations on the CAPT or in prescribed courses for reading, writing and mathematics can receive academic support either prior to or subsequent to the CAPT test through the following learning enhancement opportunities:~~

- ~~• Math/Science Learning Center~~
- ~~• Language Arts/Social Studies Learning Center~~
- ~~• Reading Center~~
- ~~• Intensive Reading and Writing~~
- ~~• Math Problem Solving I and II~~
- ~~• Writing Workshop~~
- ~~• Reading Support~~

~~Teachers are assigned to learning centers as part of their professional duties, and students voluntarily seek help or are referred to the centers during any period of the school day.~~

### **Scoring Of The Academic Expectations**

~~Any papers and scores formally contested in writing are reviewed by a panel of teachers and the Department Chair.~~

~~Assessments submitted by students which are judged not to be satisfactory will be kept on file after initial evaluation.~~

~~Recently established rubrics that have evolved through the standards work of the self study for the New England Association of Schools and Colleges accreditation process are used to assess student performance.~~

### **Exemptions (Updated As Required By CSDE).**

~~All students except for students in the following categories must meet the prescribed academic expectations and CAPT goal or alternatives for graduation:~~

#### **A. ESOL**

~~—The exemptions for ESOL students are as follows:~~

- ~~1. May be exempted from the Reading Across the Disciplines and Writing Across the Disciplines tests, which include Response to Literature, Reading for Information, Editing & Revising and both Interdisciplinary Writing Tests.~~
- ~~2. Must take the Language Assessment Scales (LAS) and that participation will be counted toward the reading AYP participation calculation.~~
- ~~3. May be exempted from the science test.~~
- ~~4. Must take the mathematics test with accommodations, if necessary, and that participation will be counted toward the mathematics AYP participation.~~

## **~~B. Special Needs~~**

~~Students with identified special education needs who cannot meet goal on the CAPT and/or meet the academic expectations will be referred to the Planning and Placement Team (PPT) for IEP review. The PPT will meet after the student has made at least one attempt to meet the standards.~~

## **~~C. Transfers~~**

~~Students who transfer as sophomores or juniors prior to the CAPT must take the CAPT and meet goal on all subtests or take the alternative route described above.~~

~~Students who transfer as juniors subsequent to the CAPT or as seniors must meet only those expectations identified in the various courses within their individual schedules.~~

## **Notification**

**~~1. Of teachers:~~** ~~At the beginning of the school year, the Guidance Department/Administration will provide teachers (in subject areas requiring performance tasks for graduation) with a list of all students who have not met a standardized test goal in their areas. Teachers in prescribed courses will be immediately notified of the junior CAPT scores upon their receipt at the school.~~

## **~~2. Of students and parents:~~**

~~—— **Juniors:** The Guidance Department/Administration will write to juniors who do not meet the CAPT goal, and to their parents, to remind them of the performance standard requirements for graduation.~~

~~—— **Seniors:** Prior to the beginning of the school year, each senior will be notified by his/her guidance counselor of his/her status relative to meeting the performance standards for graduation.~~

~~—— **Parents:** The Guidance Department/Administration will also notify in writing the parents of seniors who have not met the performance standard goal in any area and must therefore pass one or more of the district performance tasks.~~

**~~Alternate Route to Meeting Graduation Requirements~~**

~~Seniors who are not eligible for graduation with their class due to failure to meet the district graduation requirements in one or more areas as described above, may select one of the following options:~~

- ~~A. Meet goal on another administration of the CAPT.~~
- ~~B. Enroll in summer school and pass the prescribed course(s) including attainment of skill as measured by the appropriate rubric.~~
- ~~C. Return to Staples in September as a fifth year student.~~

~~(cf. 5123 Promotion and Retention)~~

~~Legal References: Connecticut General Statutes~~

- ~~————— 10-18 Courses in United States history, government and duties and responsibilities of citizenship~~
- ~~————— 10-19 Teaching about alcohol, nicotine or tobacco, drugs and acquired immune deficiency syndrome~~
- ~~————— 10-220 Duties of boards of education~~
- ~~————— 10-220a High School graduation requirements~~

~~Westport Board of Education: Approved: Oct. 12, 2004~~



## Students

### On-Campus Recruitment

~~All recruiters, military, non-military, commercial and educational providing information to high school students about post high school educational and/or career opportunities shall be afforded substantially equal opportunity, with respect to the conduct of on-campus student recruitment. Recruiters will be afforded the opportunity to conduct meetings during the school day, at a time, and in place designated by the high school administration, with those students who are voluntarily interested. The administration may limit the number of such opportunities to be granted to each organization and agency to avoid undue interference with the educational process.~~

~~Follow up visits to the high school by recruiters (in all categories specified above) in order to meet with individual students will be permitted, provided that the student is a voluntary participant in the follow up and that the appointment is scheduled on the request of the student.~~

Subject to the provisions of Subdivision (11) of Subsection (b) of Section 1-210 of the Connecticut General Statutes, the high schools of the school district shall provide the same directory information and on campus recruiting opportunities to representatives of the armed forces of the United States of America and State Armed Services as are offered to nonmilitary recruiters, recruiters for commercial concerns and recruiters representing institutions of higher education.

The Board of Education (Board) will inform, at the middle and high school level, students and parents/guardians of the availability of (1) vocational, technical and technological education and training at technical high schools, and (2) agricultural sciences and technology education at regional agricultural science and technology education centers.

The Board shall also provide full access for the recruitment of students by technical high schools, regional agricultural science and technology education centers, inter-district magnet schools, charter schools and inter-district student attendance programs, provided such recruitment is not for the purpose of interscholastic athletic competition. The Board shall also post information about these school options on its website.

Directory information or class lists of student names and/or addresses shall not be distributed without the consent of the parent or legal guardian of the student or by the student who has attained majority status.

Military recruiters or institutions of higher learning shall have access to secondary school students' names, addresses, and telephone listings unless the parent/guardian of such student submits a written request that such information not be released without their prior written consent. A student, eighteen years of age or older, rather than his/her parent/guardian, may request in writing that such information not be released without his/her prior written permission. The Board of Education shall notify parents/guardians and students of the option to make such request and shall comply with any request received.

ESSA requires the release of the student's name, address and telephone listing unless, after giving appropriate notice to parents/guardians and students 18 years of age or older, of their right to opt-out and to require, after such opt-out, written permission to release the information.

The school administrator may make the determination of when the recruitment meetings are to take place and reserves the right to deny such meeting where the holding of such meeting will materially and substantially interfere with the proper and orderly operation of the school.

Any person or organization denied the rights accorded under this policy shall have the right to request a review of the decision by the Board of Education by filing a written request with the Superintendent of Schools.

~~(cf. 5145.15—Disclosure of Directory Information Regarding Students to Commercial, Military and College Recruiters and Others)~~  
(cf. 5125 Student Records; Confidentiality)

Legal Reference: Connecticut General Statutes

1-210 (11) Access to public records. Exempt records.

10-220d Student recruitment by a regional and interdistrict specialized schools and programs. Recruitment of athletes prohibited (as amended by P.A. 12-116, An Act Concerning Educational Reform)

~~1-19(b)(11) Access to public records. Exempt records.~~

10-221b Boards of education to establish written uniform policy re treatment of recruiters.(as amended by PA 98-252)

~~Public Law 107-110, No Child Left Behind Act~~

P.L. 106-398, 2000 H.R. 4205: The National Defense Authorization Act for Fiscal Year 2001

Section 8025 of Public Law 114-95, "The Every Student Succeeds Act of 2015"

Policy adopted: \_\_\_\_\_ November 19, 1984

Amended: \_\_\_\_\_

WESTPORT PUBLIC SCHOOLS  
Westport, Connecticut

## Personnel -- Certified/Non-Certified

### Personnel Records

Personnel records shall be maintained securely and confidentially in the central office for all current employees and shall include information customarily kept in personnel files. Files also shall be maintained for past employees, including years of employment, salaries, and such other basic and essential information as the Superintendent of Schools or his/her designee shall require.

There shall be only one personnel file for each employee, and Principals shall not maintain employee files separate from the official employee file in the Central Office.

Requests for access to personnel files, except from an employee to see his or her own file, shall be referred to the Superintendent or his/her designee who shall determine whether disclosure of such records would legally constitute invasion of employee privacy. If the Superintendent believes disclosure is not an invasion of privacy, requested information shall be disclosed, but professional courtesy suggests the employee should be notified of such disclosure.

If the Superintendent or his/her designee determines disclosure would invade employee privacy, the employee/s and collective bargaining representatives if any, shall be notified in writing of the request. If the Superintendent or his/her designee does not receive a written objection, from the employee or bargaining representative, within seven business days from receipt of their notification, or if there is no evidence of receipt not later than nine business days from the date the notice was mailed, sent, posted, or otherwise given, requested records shall be disclosed. However, if an objection is received in a timely manner on the form prescribed, the Superintendent shall not disclose requested information unless directed to do so by the Freedom of Information Commission. Notwithstanding an objection filed by an employee's bargaining representative, the employee may subsequently approve disclosure of records by filing a written notice with the Superintendent or his/her designee.

Employee or bargaining representative objections to disclosure of records shall be made in writing on a form developed by the Superintendent or his/her designee including a signed statement by the employee or bargaining representative, under penalties of false statement, that to the best of respondent's knowledge, information, and belief, there is good grounds to support the objection and that the objection is not interposed for delay.

The records may be disclosed when the Superintendent or his/her designee does not believe such disclosure would legally constitute an invasion of privacy. The records, in such a situation, shall first be disclosed to the requestor, followed within a reasonable time after disclosure, with the sending of a written or electronic copy or brief description of such request to the employee and any applicable collective bargaining representative. Disclosure shall only be considered an invasion of privacy where (1) such records do not pertain to a legitimate matter of public interest and (2) disclosure of such records would be highly offensive to a reasonable person.

Records maintained or kept on file by the State Department of Education or the Board which are records of a teacher's personal misconduct shall be deemed to be public records, and subject to disclosure under the Freedom of Information Act. Disclosure of such records of a teacher's personal

misconduct shall not require the consent of the teacher.

Notwithstanding earlier provisions of this policy, personnel evaluations of certified employees, except the Superintendent, are not public records subject to disclosure - unless the employee consents in writing to the release of such records.

Each employee's own file shall be available for his or her inspection at reasonable times, and, upon request, employees will be provided a copy of information contained in his or her file.

In accordance with federal law, (ESSA), the District shall notify parents at the beginning of each school year of their right to request information regarding the professional qualifications and degrees of teachers and the qualifications of paraprofessionals for any teacher or paraprofessional who is employed by a school receiving Title I funds and who provides instruction to their child at that school. The District will provide such information on request in a timely manner. The District shall also provide notification to the parent/guardian of a child who has been assigned or has been taught for four or more consecutive weeks by a teacher not meeting applicable state certification at the grade level and subject area in which the teacher has been assigned.

Files containing medical information regarding an employee will be kept separate from other personnel files.

Legal Reference: Connecticut General Statutes

1-213 Agency administration. Disclosure of personnel, birth and tax records.

1-214 Objection to disclosure of personnel or medical files (as amended by PA 18-93)

1-215 Record of arrest as public record.

1-206 Denial of access to public records or meetings.

10-151a Access of teacher to supervisory records and reports in personnel file.

10-151c Records of teacher performance and evaluation not public records. (as amended by PA 02-138 and PA 13-122)

Perkins v. Freedom of Information Commission, 228 Conn. 158 (1993)

The Americans with Disabilities Act

Section 1112(c)(6) The Every Student Succeeds Act (ESSA)

Section 1112(e)(1)(B) The Every Student Succeeds Act (ESSA)

Policy approved:

WESTPORT PUBLIC SCHOOLS  
Westport, Connecticut

## Personnel -- Certified

### Probationary/Tenure Status

#### ~~Teacher Tenure Interpretations~~

- ~~A. Teachers with less than forty consecutive school months of Westport service go on tenure at the time forty consecutive school months of Westport service is completed on the recommendation of the Superintendent of Schools and offered a contract to return for the following year. During this probationary period, the Board of Education may notify the teacher prior to April 1 that his/her contract will not be renewed for the following year. Upon a teacher's written request, such notice shall be supplemented within seven days by a statement of the reason or reasons for such failure to renew. Within twenty days of receipt of non-renewal notice, the teacher may request in writing a hearing before the Board of Education, unless the reason for the non-renewal is elimination of position or loss of position to another teacher, to be held within fifteen days of such request, and at such hearing the teacher has a right to appear with counsel of his choice.~~
- ~~B. When a teacher who has attained tenure status in another Connecticut town moves to Westport, he/she becomes covered by the tenure provisions of the law after twenty consecutive school months unless April 1 non-renewal notice is given him/her prior to the completion of twenty months service.~~
- ~~C. Westport "service" includes only that teaching experience in Westport for teachers holding certificates issued by the State Board of Education.~~
- ~~D. Tenure includes all certified staff members below the rank of Superintendent. When a person moves from a Westport teaching assignment to an administrative position he/she retains his/her tenure rights as a teacher, but must serve a three (3) year probationary period in administrative work.~~
- ~~E. A tenure teacher who is granted a leave of absence by the Board does not forfeit tenure rights. However, a tenure teacher who interrupts continuity of service by resignation or transfer to another system, must serve the probationary period of 20 months upon reemployment.~~

~~Teachers who leave the Westport schools prior to attaining tenure must serve the full probationary period of forty consecutive months after re-employment.~~

All certified personnel may attain tenure as provided by law.

The Board of Education will expect thorough and competent evaluations of all personnel before they become candidates for tenure. The awarding of a contract by the Superintendent for a teacher to return for the following year must be based on effective practice as informed by performance evaluations conducted pursuant to Connecticut General Statute 10-151b, as amended and with the teacher evaluation guidelines recommended by the Performance Evaluation Advisory Council (PEAC) and approved by the State Board of Education (6/27/12).

Procedures for continuation or termination of a contract, failure to renew a teacher's contract, or appeals thereof shall be in accordance with Connecticut General Statute 10-151, as amended.

(cf. 4115 - Evaluation/Supervision)

Legal Reference: Connecticut General Statutes

10-151 - Employment of Teachers. ~~Definitions.~~ Notice and hearing on ~~failure to renew or termination of or failure to renew of~~ contract. Appeal Appeals as amended by P.A. 10-111, An Act Concerning Education Reform in Connecticut, and PA 12-116, An Act Concerning Educational Reform and PA 19-139, An Act Concerning Education Issues.

10-158a Cooperative arrangements among towns. School building projects. Student transportation.

Connecticut Guidelines for Educator Evaluation adopted by the State Board of Education, June 27, 2012.

Connecticut's System for Educator Evaluation and Development (SEED)

Policy adopted: ~~\_\_\_\_\_~~ July 1964

Policy revised: ~~\_\_\_\_\_~~ 2006

Policy revised:

WESTPORT PUBLIC SCHOOLS  
Westport, Connecticut

## Personnel — Certified/Non-Certified

### Study/Use of Religious Symbols, Music, etc.

**Study/Display:** On a developmentally appropriate basis, the school system should encourage students to learn about the customs, practices and holiday celebrations of many different religions and cultures. Studies of the religious histories, arts, symbols, and tenets, must be for educational purposes, and must neither advocate nor disparage the practice of religion or the beliefs of any particular religion.

1. **Religious Holidays:** May be noted at appropriate times; their historical origins, contemporary significance and symbols may be studied. Teachers should be sensitive to children of different religions and provide balance in assignments.
2. **Religious Symbols:** These include Buddha, Crèche, Cross, Star of David, and symbols of other religions that may be studied within the curriculum. These are sacred to particular faiths and belong primarily in a place of worship or a home. School use must be for educational purposes only, on a brief, temporary basis.
3. **Holiday Symbols:** Symbols such as Santa Claus, menorah, dreidels, shofar, Easter eggs, Christmas wreaths and trees, etc., while they may have no religious significance or liturgical applications, have unquestionably become associated with religious celebrations. Therefore, to avoid having students or visitors to the schools feel uncomfortable or left out, staff should be sensitive when displaying holiday symbols. If used in classrooms or hall bulletin boards, they are to be used in an educational context, and are to reflect cultural and religious diversity.

Decorations in public areas should be minimal. They should not use the holiday symbols of one religion exclusively or dominantly, or display them in such a way as to suggest that the school is celebrating a particular religious holiday.

4. **Art, Literature, Music:** Some of the world's greatest art, music and literature were developed in connection with religion. They may be studied if presented in an objective and neutral manner as the cultural heritage of religious holiday.

### **Performances: Follow these guidelines for winter holiday programs:**

1. Material for performances near religious holidays must be chosen on the basis of educational merit.
2. Material associated with one religion should not dominate a program.
3. Sacred music should **not** be included in elementary schools, as there is a wide selection of non-sacred music appropriate for this age group.

## Personnel - Certified

### Study/Use of Religious Symbols, Music, etc. (continued)

#### Performances: Follow these guidelines for winter holiday programs: (continued)

4. Sacred music may be used at the middle schools and Staples. We rely on the sensitivity of our staff to plan a mixture of secular and sacred music, to seek balance so that sacred music of one religion does not dominate, and to convey that study and/or performance of such music will not be construed as a religious holiday observance.

### Scheduling

**Normal School/Extra Curricular Activities:** *No* school events (including rehearsals, games and athletic practices) are to be scheduled on major religious holidays that are also school holidays, i.e., Good Friday, Easter, Christmas, Rosh Hashanah, Yom Kippur. Normal school activities may proceed on religious holidays that are not school holidays but ***students are not to be required to attend or to be penalized for missing practices, rehearsals, etc., because of religious observance.*** Jewish holidays run from sundown the evening before the holiday to just after sundown on the day of the holiday. Therefore, avoid evenings before the holidays.

**Special Programs:** On religious holidays that are *not* school holidays, some observant children may miss school or be involved in family observances the night before. Therefore, although normal school activities may be scheduled, *whenever possible* do not schedule special programs, assemblies, one-time performances, field trips, proms, or other activities that are *unique or hard to duplicate* on days or evenings when some students may be unable to attend. The same sensitivity should be shown in planning programs for parents such as Back-to-School Nights, curriculum nights, and special informational meetings, so that those involved in religious obligations do not miss important events.

**Exceptions:** There may be times when such scheduling is unavoidable because of the involvement of other districts, athletic leagues, etc., or because a particular site or speaker is available only at that time. Similarly, in developing the system-wide calendar, avoidance of scheduling on a religious holiday may be difficult or may not be possible because of conflicts with other school or school system events, staff members' own schedules, etc.

**Homework and Tests:** Students involved in religious observance or family celebrations on some holidays may not have the time to do schoolwork assigned specifically over the holiday period, or to study for a test scheduled for the very next day. Teachers may find it least complicated not to assign homework to be due on, or schedule tests for, those days. If assignments are unavoidable, students observing the holidays are to be given the opportunity to make up tests or homework. *All students should be required to do all assigned work but no student should be penalized for religious observances.*



## Personnel - Certified

Study/Use of Religious Symbols, Music, etc. (continued)

Scheduling (continued)

*Note: The homework caveat need not apply to assignments given many weeks in advance.* During any lengthy period, many students encounter diversions due to family obligations, temporary illness, extra-curricular activities, and after school jobs, as well as religious observances. It is appropriate to expect students to plan ahead, so that they can complete their work on time despite those other demands.

**New Material:** Teachers should avoid introducing new material, or work that would be difficult to repeat or make up, on days when some students may be absent for religious observance.

Regulation approved: 1996  
[Regulation revised:](#)

WESTPORT PUBLIC SCHOOLS  
Westport, Connecticut



## Personnel – Certified/Non-Certified

### Freedom of Speech

#### Display of Religious Symbols and Decorations

This policy applies to office, administrative, and other spaces where the instruction of students or the provision of services to students is not intended to occur and where students are not typically found.

It is the policy of the Board that it shall neither promote nor discourage any religious belief or non-belief. Instead, the Board encourages all students and employees to have an appreciation for and tolerance of the many points of view which they may encounter among the District's many students and employees.

Consistent with this policy the Board recognizes and respects the right of all of its employees to engage in private and quiet religious activities, so long as that conduct is not disruptive and does not interfere with the rights of others to not participate in those activities or to have those activities imposed upon them. Employees whose religious beliefs require religious activity during the work day are to request of their supervisor a non-disruptive place for such practice. Time for such practice will be during break periods or non-paid time.

In some religious traditions there is an expectation that specific apparel will be worn in the workplace. Moreover, many employees occasionally, choose to wear to work clothing that suggests or implies the observance of a religious holiday. The District's policy is to balance the rights of employees to express their religious beliefs with the right of their co-employees to not have religious beliefs, customs, or practices imposed upon them. At the same time, the District requires all employees to maintain a professional appearance and to respect the integrity of the workplace. Restraint, tolerance, and respect for the traditions of other employees is both expected and required.

The use of District resources, including office supplies and equipment, in connection with or in support of the personal observance of religious beliefs, is no more appropriate than the use of District resources and equipment for any non-religious personal purpose, and will not be tolerated.

Any and all decoration of work spaces by employees is expected to be done in a manner which is not disruptive and which does not interfere with work performance. Employees are expected to be sensitive to the rights and views of others. The visibility of decorations to other employees and their resulting impact upon the workplace should be considered by employees who place them in the workplace, and will be considered by the Administration in monitoring adherence to this policy.

Policy adopted:

WESTPORT PUBLIC SCHOOLS  
Westport, Connecticut



## Personnel – Certified

### Evaluation, Termination, and Non-Renewal ~~Employment~~ of Athletic Coaches

It is the policy of the Westport Board of Education ~~of the Town of Westport (the “Board”)~~ that an athletic coach employed by the Board shall:

1. adhere to all Board policies, rules and regulations;
2. conduct himself or herself in a professional manner;
3. serve as a role model for students; and
4. demonstrate competence and proficiency in his or her role as an athletic coach of a particular sport.

For purposes of this policy, the term “athletic coach” means any person holding (and required to hold) a coaching permit issued by the Connecticut State Department of Education who is hired by ~~a local or regional b~~the Westport Board of ~~education~~Education to act as a coach for a sport season. This term “coach” under this policy shall include only coaches who have direct responsibility for one or more teams (including ~~assistant coaches~~ who if they serve as a coach to another ~~team (e.g., JV))~~], and the term shall not include other assistant coaches and volunteer coaches.

The Superintendent may adopt administrative regulations in accordance with this policy.

#### I. Evaluations

Pursuant to state law, the Board requires that an athletic coach employed by the Board be evaluated on an annual basis by the coach’s immediate supervisor. An athletic coach shall be provided with a copy of any such evaluation. Other assistant and volunteer coaches may be evaluated as directed by the Superintendent of Schools or his/her designee.

#### II. Employment of an Athletic Coach

A. Athletic coaches serve at the discretion of the Superintendent, and their employment in their specific coaching positions (e.g., basketball, golf) may be non-renewed or terminated at any time, subject to the provisions set forth below which apply to athletic coaches who have served in the same position for three or more consecutive years. ~~except as follows.~~

B. If the Superintendent terminates or non-renews the coaching contract of an athletic coach who has served in the same coaching position for three or more consecutive school years, the Superintendent, or his/her designee, shall inform such coach of the decision ~~If the athletic coach has served in the same coaching position for two or more consecutive school years, the following procedures shall apply. The Athletic Director may non-renew the employment of any such athletic coach by providing~~

~~written notification of that action~~ within ninety (90) calendar days of the end of the athletic season covered by the contract. In such cases, the athletic coach will have an opportunity to appeal the decision of the Superintendent in accordance with the procedures set forth below in Section III.

C. Notwithstanding any rights an athletic coach may have to a hearing, nothing prohibits a Superintendent from terminating the employment contract of any athletic coach at any time, including an athletic coach who has served in the same coaching position for three or more consecutive school years.~~The Athletic Director or the Superintendent may terminate the employment of any such athletic coach at any time for~~

- 1) for reasons of moral misconduct, insubordination, failure to comply with the Board's policies, rules and regulations; or
- 2) because the sport has been canceled.

D. If a decision to terminate a coach's employment is made during the athletic season, the Superintendent shall remove the coach from duty during the pendency of any hearing conducted pursuant to this policy.

## **P 4117.6(b)**

### **Personnel—Certified**

#### **Employment of Athletic Coaches (continued)**

### **III. Hearing Procedures**

An athletic coach who has served in the same coaching position for ~~two~~three or more consecutive years may appeal any such non-renewal or termination decision (except if such decision was due to cancellation of the sport) to the Board of Education in accordance with the following procedures~~as follows~~:

~~First, within seven school days of the written notification of non-renewal or termination, the coach may file a written request to the Superintendent for review of that decision. Failure to submit a timely request for review shall constitute a waiver of said opportunity for review. The Superintendent shall meet with the coach, the evaluator and other appropriate personnel, and shall render a written decision on the matter within seven school days of such meeting.~~

~~If the coach is not satisfied with the decision of the Superintendent, the coach may appeal to the Board of Education in accordance with the following procedures:~~

- A. The athletic coach must file a written appeal with the Board within ten (10) calendar days of the Superintendent's written notification of non-renewal or termination~~decision~~. Such appeal shall set forth the basis on which the athletic coach seeks review of that decision, and a copy of said appeal shall be sent to the

Superintendent. Failure to submit a timely written appeal shall constitute a waiver of said appeal opportunity.

- B. Within a reasonable period of time of its receipt of a written appeal of the Superintendent's decision, ~~a subcommittee of the Board~~ or a committee of the Board as designated by the Chairperson~~that consists of no more than four (4) members~~, shall conduct a hearing to consider such appeal. Reasonable notice of the time and place for such hearing shall be issued to the athletic coach prior to the commencement of the hearing.
- C. At the hearing, the athletic coach shall have an opportunity to present facts and evidence in support of renewal and/or reinstatement, and the Superintendent shall have the opportunity (but shall not be obligated) to present facts and evidence in support of the decision of non-renewal and/or termination. For good cause shown, the athletic coach may call a limited number of witnesses to testify if there is a clear need for witnesses to present factual information (rather than simply expressing an opinion on the skill or competence of the athletic coach). In any event, cumulative or redundant testimony shall not be allowed.
- D. The decision of non-renewal or termination shall be affirmed unless the Board determines that the decision is arbitrary and capricious. The coach shall bear the burden of proof on this point.

#### **4117.6(e)**

### **Personnel—Certified**

#### **Employment of Athletic Coaches (continued)**

### **III.—Hearing Procedures (continued)**

- E. Within a reasonable period of time following the hearing ~~(generally within fourteen (14) school days)~~, the Board shall ~~evaluate the findings of its subcommittee and shall~~ determine whether the Superintendent acted in an arbitrary and capricious manner in making his/her decision not to renew and/or to terminate, and shall provide a written decision to the coach. The decision of the Board shall be final.

Legal References: ~~Public Act 04-243~~ [Conn. Gen. Stat. § 10-222e](#)





## Students

### Disenrollment

The Board of Education views regular and uninterrupted school attendance as the legal responsibility of each student and his/her parent/guardian(s). Classroom learning experiences are important to the learning process and vital to student success.

The Board encourages and appreciates the need for accurate student enrollment counts/data at the district and individual school levels. Such counts are crucial to the appropriate fulfillment of the Board's responsibilities related to current and long term budget, personnel, and facility planning. District enrollment data, as required by the State Department of Education, must also be current and accurate to facilitate the timely, correct and equitable calculations of grant entitlements supportive of district efforts.

The Superintendent of Schools or his/her designee is authorized to develop and implement administrative guidelines necessary to ensure the accuracy of District enrollment counts through the timely removal from District rolls of those students no longer attending and/or eligible for services in the District.

(cf. 5111 - Eligibility of Students to Attend Westport Schools)

(cf. 5112 - Ages of Attendance)

(cf. 5113 - Attendance Excuses, and Chronic Absenteeism)

(cf. 5113.2 – Attendance, Truancy, and Chronic Absenteeism)

Legal Reference: Connecticut General Statutes

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10-15 Towns to maintain schools

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10-15c Discrimination in public schools prohibited. School attendance by five-year olds, as amended by PA 97-247

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10-76a - 10-76g re special education

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10-184 Duties of parents (re mandatory schooling for children ages five to sixteen, inclusive) - as amended by PA 98-243, and PA 00-157

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10-186 Duties of local and regional boards of education re school attendance. Hearings. Amended by PA 96-26, An Act Concerning Graduation Requirements and Placement of Older Students

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Appeals to state board. Establishment of hearing board

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10-198a Policies and procedures concerning truants, as amended by PA 00-157

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10-199 through 10-202 Attendance, truancy -in general.

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[10-221 \(b\) Board of education to prescribe rules.](#)

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[10-233a - 10-233f Inclusive; re: suspend, expel, removal of pupils](#)

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[10-233c Suspension of pupils](#)

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[10-233d Expulsion of pupils](#)

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[10-261 Definitions](#)

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[State Board of Education Regulations](#)

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[10-76a-1 General definitions \(c\) \(d\) \(q\) \(t\)](#)

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[10-76d-7 Admission of student requiring special education \(referral\)](#)

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[10-204a Required immunizations \(as amended by PA 98-243\)](#)

## Students

### Crisis Management Plan (Emergencies and Disaster Preparedness Plan)

It is the policy of the Westport Board of Education (Board) to maintain a safe, orderly, civil, and positive learning environment, and to be prepared, in so far as possible, to prevent and respond to unexpected crises quickly and appropriately. While the very nature of a crisis may make preparation difficult, the Board believes that staff and students should be ready to respond quickly and appropriately to emergency situations.

The Board of Education recognizes that all District staff and students must be prepared to respond quickly and responsibly to emergencies, disasters, and threats of disaster.

Annually the Board shall develop, maintain and implement an emergency disaster preparedness and response plan ("School Security and Safety Plan") and administrative procedures which detail provisions for responding to emergency situations and disasters and the role that local emergency service providers shall play in crisis preparedness and incident management, and which shall be included in the District's comprehensive school safety plan. Such plans shall be based on the school security and safety plan standards and the accompanying School Security and Safety Plan Template developed by the Department of Emergency Services and Public Protection, pursuant to section 86 of PA 13-3.

This shall include the establishment at each school of a school security and safety committee and consultation and cooperation with law enforcement, fire department, and emergency rescue squads. Examples of school crises include, but are not limited to, fire, bus accidents, nuclear disaster, criminal acts, civil disturbances, disease epidemic, physical injury, death, presence of intruders on school premises, hazardous material spills, weather-related emergencies, natural disasters, bomb threats, or terrorist activities.

(cf. 5131.7 - Weapons and Dangerous Instruments)

Legal Reference: Connecticut General Statutes

10-154a Professional communications between teacher or nurse and student.

10-207 Duties of medical advisors.

10-209 Records not to be public.

10-210 Notice of disease to be given parent or guardian.

10-221 Boards of education to prescribe rules.

10-222m - School security and safety plans. School security and safety committees

10-222n - School security and safety plan standards

19a-221 Quarantine of certain persons.

52-557b Immunity from liability for emergency medical assistance, first aid or medication by injection. School personnel not required to administer or render.

PA 13-3 An Act Concerning Gun Violence and Children's Safety

The Family Educational Rights and Privacy Act of 1974, (FERPA), 20 U.S.C. 1232g, 45 C.F.R. 99.

Policy adopted:

WESTPORT PUBLIC SCHOOLS  
Westport, Connecticut