

GROUND LEASE AGREEMENT**LEASE TERMS SUMMARY**

Effective Date	The date that this Lease has been fully executed by both Landlord and Tenant as reflected on the signature page(s).
Landlord	Town of Skowhegan
Tenant	BD Solar Skowhegan, LLC, a Maine limited liability company
Land	Approximately _____ () acres, plus or minus, of the real property located along _____, in the Town of Skowhegan, Somerset County (the “ County ”), State of Maine, Tax ID Number _____, as approximately depicted on <u>Exhibit A</u> and described in <u>Exhibit B</u> attached hereto.
Initial Term	480 calendar months.
Renewal Terms	Two (2) successive renewal terms of ten (10) years each.
Rent	One Thousand Dollars (\$1,000.00) per Acre (prorated for any fractional Acre) per year, with a 2% annual price escalator
Intended Use	The construction and operation of a solar photovoltaic power array (the “ Project ” or “ Solar Facility ”) for the generation and distribution of electric power.
Landlord’s Notice Address	
Tenant’s Notice Address	BD Solar Skowhegan LLC Attn: Nicholas Mazuroski 622 Congress Street Suite 202 Portland, ME 04101 Email: nick@dirigosolar.com

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this "Lease") is made and entered into as of the Effective Date, by and between BD Solar Skowhegan, LLC, a Maine limited liability company ("Tenant"), and _____, a _____ ("Landlord") (each a "Party"), and collectively the Parties").

In consideration of the rent to be paid to Landlord by Tenant, as hereinafter provided, and of the covenants and agreements upon the part of Landlord and Tenant to be kept and performed, Landlord hereby leases to Tenant, and Tenant leases from Landlord, real property located on _____ and being an approximately _____ () acre portion the real property parcel shown on the map attached hereto as Exhibit A, and by this reference made a part hereof (such portion, the "Land"), and all improvements, fixtures, personal property and trade fixtures now or in the future located thereon, together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (hereinafter collectively referred to as the "Premises"), to be occupied and used upon the terms and conditions herein set forth. Tenant's personal property located thereon, whether affixed to the land or not, shall hereafter be referred to as "Tenant's Property."

1. Term of Lease.

- (a) The term of this Lease shall commence on the Effective Date and shall end at 11:59pm local time on the last day of the four hundred eightieth (480th) full calendar month following the Effective Date unless extended or sooner terminated as herein provided ("Term").
- (b) Tenant shall pay Landlord base rent at an annual rate equal to the number of acres (including any fractional acre) within the Premises multiplied by the Per Acre Charge of One Thousand Dollars (\$1,000.00) in effect for the portion of the Term at issue. The "Per Acre Charge shall be adjusted for each subsequent calendar year, so that the Per Acre Charge that will be in effect for such subsequent calendar year shall be equal to the Per Acre Charge in effect for the calendar year immediately prior to the subsequent calendar year at issue, multiplied by 102%.
- (c) Lease payments will accrue or be payable from the Effective Date of this Lease Agreement through the decommissioning of the Project. Tenant shall make payments to Landlord quarterly in arrears. If Tenant is delinquent in any payment of Base Rent for more than ten (10) days, Tenant shall pay to Landlord on demand a late charge equal to five percent (5%) of such delinquent sum.

2. Termination.

- (a) Tenant and Landlord agree that Landlord may terminate the Lease Agreement by re-entering the Premises (or a part of them in the name of the whole) itself or by an authorized agent at any time if: (1)

Tenant breaches this Lease in any way and it is not cured in accordance with the terms of this Lease; (2) any distress or execution is levied on any of Tenant's Property and not removed within ninety (90) days; (3) Tenant becomes insolvent; (4) Tenant fails to commence construction of the Project within three (3) years from the Effective Date of the Lease Agreement; (5) Tenant fails to complete construction of the Project within four (4) years from the Effective Date of the Lease Agreement; (6) Project comes to an end; or (7) Project becomes inactive for twelve (12) consecutive months at any time after construction is completed; provided that Landlord shall not exercise any rights of forfeiture or re-entry without first serving a notice of any breach of Tenant's obligations on Tenant and on all mortgagees or collateral assignees of Tenant's interest in the Lease Agreement, to which Landlord is required to provide written notice of such breach pursuant to the express provisions of this Lease. Before exercising such rights of re-entry or forfeiture, Landlord shall permit the time required in accordance with this Lease to allow the breach specified in the notice to be remedied.

3. **Utilities.** During the Term, Tenant shall pay for all public utilities exclusively used in or for the Premises by Tenant.
4. **Land Clearing.** In the event that Tenant clears forested areas of the Property, any timber shall remain the possession of Landlord. Tenant shall be responsible for the removal and proper disposal (off-site) of any stumps, including all costs and expenses associated with such removal and disposal. Tenant and Landlord will mutually select an individual and/or company to conduct any land clearing and/or timber harvesting on the leased Property. All site work, including work pursuant to Section 6 below, must have prior approval of Landlord, which approval shall not be unreasonably withheld, conditioned or delayed and any site work conducted on the landfill area of the Premises must additionally have prior approval of the Maine Department of Environmental Protection ("ME DEP") and all regulatory agencies having jurisdiction, and be in compliance with Landlord's Post Closure Order and Post Closure Monitoring and Maintenance Plan ("PCMMP"), as approved by ME DEP. The Tenant will be responsible for obtaining all applicable approvals, permits, authorizations, etc., whether or not the work is conducted on the landfill area. The project may also require Federal Aviation Administration ("FAA") permitting. Any repairs, additional work required, or additional costs needed in order for Tenant to receive such applicable approval permits, authorizations, zoning changes etc. shall be solely the responsibility of the Tenant.
5. **Good Neighbor Policy.** Tenant shall be responsible for conducting all work associated with the construction, operation and the decommissioning of the Solar Facility, in accordance with the terms of all applicable federal, state and local regulations and requirements, and shall return the Land to its original state following the term of the Lease Agreement or any extensions thereof. In addition, Tenant and

Landlord value developing the Project in harmony with neighbors, and Tenant will act accordingly in processing its approvals for the Project.

6. **Road Construction, Fencing, and Power Lines.** Any road constructed by Tenant will require a PE stamped engineered drainage plan, and all work must be provided with appropriate stormwater management so as to properly address and limit any drainage issues and will be in accordance with all applicable federal, state and local regulations. Soil removed for road construction remains the property of Landlord, and will be placed at a site on the Landlord's Property as designated by Landlord. Any power line or electrical equipment installed on or to the Premises will be constructed in a manner that does not unreasonably interfere with Landlord's existing uses, including access to and maintenance of Landlord's groundwater monitoring wells and methane gas vents. Tenant shall also install a security fence around the perimeter of the Project site in a manner that does not interfere with Landlord's existing uses. Tenant may not disturb the landfill cap while constructing and operating the Solar Facility, unless disturbance is temporary and the cap is repaired in a manner approved by ME DEP. Any costs or expenses related to this Section 6 shall be the sole responsibility of Tennant.

7. **Insurance.**

- (a) Tenant must insure the Solar Facility and all of Tenant's Property against loss or damage by fire, windstorm, earthquake and similar hazards at full replacement cost value. Tenant hereby waives any and all claims against Landlord for any damage or destruction of the Solar Facility or other Tenant's Property which is covered by any insurance carried by Tenant or which would be covered by the insurance Tenant is required to maintain hereunder if Tenant had maintained the insurance required hereunder, regardless of whether such damage or loss arises out of or is related to Landlord's negligent acts or omissions, and all insurance policies of Tenant shall include a waiver of subrogation clause in favor of Landlord. Beginning on the Effective Date, Tenant, at its sole cost and expense shall keep or cause to be kept for the mutual benefit of Tenant and Landlord, Commercial General Liability Insurance (1986 ISO Form or its equivalent) with a combined single limit, each Occurrence and General Aggregate-per location of at least Two Million Dollars (\$2,000,000.00) ("2MM"), or such greater amount(s) and additional coverages as shall apply to the Solar Facilities as set forth in Chapter 324 of the Electricity Rules of the Maine Public Utilities Commission as of the Effective Date, which policy shall insure against liability of Tenant, arising out of and in connection with Tenant's use of the Premises, and which shall insure the indemnity provisions contained in this Lease.
- (b) If applicable, Tenant shall maintain worker's compensation insurance with no less than the minimum limits required by law.

- (c) Tenant's insurance policies required by this Lease shall: (i) be issued by insurance companies licensed to do business in Maine, with a general policyholder's ratings of at least A-, and a financial rating of at least VI in the most current Best's Insurance Reports available on the Commencement Date; (ii) name Landlord as additional insured as its interest may appear; (iii) provide that the insurance not be canceled, non-renewed or coverage materially reduced unless thirty (30) days advance notice is given to Landlord; (iv) be non-assessable primary policies, and non-contributing with any insurance that Landlord may carry; (v) provide that any loss shall be payable notwithstanding any negligence of Landlord or Tenant which might result in a forfeiture of such insurance or the amount of proceeds payable; and (vi) have no deductible exceeding Ten Thousand Dollars (\$10,000.00) unless approved in writing by Landlord.
- (d) Tenant shall provide Landlord with a certificate evidencing any such insurance within thirty (30) business days following the Effective Date. Thereafter, Tenant shall provide any such certificate within ten (10) business days after receiving a request for such certificate from Landlord in writing or any change in the insurance policy by Tenant.

8. **Fire or Other Casualty.** In the event that the Premises, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole judgement, the damage is of such nature or extent that it is economically unfeasible for Tenant to repair and restore the Premises or the improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. Following any casualty leading to Tenant's termination of this lease, Tenant must promptly and with all due diligence raze the remaining damaged facilities and fully restore the Premises to the condition which existed prior to Tenant's use thereof and tenant shall continue to pay rent until the Premises has been completely restored, at Tenant's sole expense, in accordance with Article 5.

9. **Taxes.** Tenant shall be responsible for timely payment of personal property taxes, ad valorem taxes, assessments and excise tax of any kind or nature which have been or may be imposed upon the Land or Premises following the Effective Date by applicable governmental entities (e.g. Landlord), including, without limitation, applicable taxes on all improvements made to the Premises by Tenant including all property for the "Intended Use of the Premises" installed in or brought onto the Premises by Tenant.

10. **Condemnation.**

- (a) In the event that the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for

Tenant's purposes (herein called a "Total Taking"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

- (b) In the event that a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking and such taking does not constitute a Total Taking (herein called a "Partial Taking"), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be equitably reduced based on the acreage so taken and Tenant's loss of use of the remainder of the Premises.
- (c) In the event of a Total Taking or a Partial Taking, each party shall have the right to make a separate claim against the condemning authority for damages sustained by such party based on the parties' respective interests in the Premises. In the event that Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant's leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, and the cost of any restoration or repair necessitated by such taking or condemnation. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself in such proceedings, and Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings. Neither Landlord nor Tenant shall enter voluntarily into any binding agreement or settlement related to a Total Taking or a Partial Taking without the prior consent of the other party if such settlement would bind or affect the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

11. **Maintenance and Repairs.** Tenant shall be responsible for the repair and maintenance, including all costs and expenses thereof, of the entire Premises, with the exception of Landlord's responsibilities under applicable local, state and federal rules and regulations and the Post Closure Order with the ME DEP regarding this closed landfill, including without limitation, maintaining, monitoring and reporting of groundwater monitoring wells, methane vents and leachate collection pipeline

and any structure or improvements now or hereafter required under the PCMMP (the "Landfill Matters"). Tenant shall be responsible for, including all costs or expenses thereof, for mowing all grass, animal control, and planting on bare areas as to the Premises and keeping the access road clear. Landlord shall only be responsible for damage to access roads caused directly by Landlord's negligent acts or omissions or for maintenance of any access roads needed solely by Landlord for Landlord's required activities. Tenant shall be responsible for any other access road maintenance and/or repair costs. Notwithstanding the above, any cap and/or site maintenance and repair activities, including that which may be required by ME DEP, which are due in whole or in part to Tenant's proposed or actual activities or Tenant's negligent acts or omissions (the "Tenant Caused Matters") shall be managed and paid for by Tenant; provided, however, (i) prior to performing any work or taking any action with respect thereto, Tenant must first notify Landlord of the existence of any such Tenant Caused Matters (or if Landlord discovers such Tenant Caused Matters Landlord may give notice to Tenant thereof), and Tenant shall deliver to Landlord a detailed description of all work and other activities the Tenant proposes with respect to such Tenant Caused Matter, together with copies of all related notices, correspondence, reports and other information Tenant has with respect thereto, (ii) if Landlord desires to conduct further investigation or otherwise further assess or evaluate the Tenant Caused Matters, Tenant shall provide Landlord with reasonable access to the Premises for such purposes and otherwise fully cooperate and provide requested information to Landlord with respect thereto, (iii) if Landlord has any comments, concerns or other feedback with respect to the proposed work or activities, Tenant shall revise its work and/or action plan to reasonably address Landlord's comments, concerns and/or other feedback and resubmit same to Landlord for approval, (iv) Tenant shall not proceed with its work or activities regarding Tenant Caused Matters unless and until Landlord has approved the submittals described above, but Tenant agrees to complete all such submittals to Landlord and respond to Landlord comments, concerns and feedback in accordance with the above as quickly as is reasonably possible, (v) in lieu of Tenant performing necessary work or taking other action with respect to Tenant Caused Matters, Landlord shall have the right, in its sole and absolute discretion, to enter the Premises as may be reasonable or necessary to address the work or actions related to the Tenant Caused Matter, and Landlord may perform such work or take such actions itself and/or through its consultants and independent contractors, and in such case Tenant shall fully cooperate with Landlord, including providing all reasonable access to the Premises and coordinating with Landlord in connection therewith, and (vi) in the event Landlord elects to perform work or activities itself and/or through its consultants and independent contractors as discussed above, Tenant shall be responsible to pay to Landlord all costs and expenses incurred by Landlord in connection with the work or other actions performed by Landlord in connection with the Tenant Caused Matters, plus a management and oversight charge of 15% of such costs, and any such amounts shall be due and payable by Tenant to Landlord within 30 days after Landlord's delivery to Tenant of Landlord's invoice for such amounts, with the right of Landlord to invoice Tenant for such amounts periodically as such works and/or activities progress, or in bulk upon full

completion, as determined by Landlord in its sole discretion. Landlord shall be responsible for any other cap maintenance and repairs that may be required by ME DEP or that Landlord determines are necessary for purposes of compliance with Landlord's Closure Order. All maintenance and repairs, or any other activities on the Landfill cap, shall be conducted in compliance with the Landlord's Closure Order and PCMMP.

12. Default. In the event of the failure of either party to comply with any term, covenant or condition of this Lease for a period of five (5) business days after the defaulting party's receipt of written notice of such failure from the other party for any failures involving the Landfill cap and/or leachate collection pipe, or a period of thirty (30) calendar days for all other failures to comply with this Lease after the defaulting party's receipt of written notice from the other party of such failure, then the defaulting party shall be deemed in default hereunder and the other party may, at its option, pursue any and all remedies available to such party at law or in equity, including, but not limited to termination of this Lease. If the failure is for a non-monetary default that does not involve the Landfill cap and/or leachate collection pipeline which cannot reasonably be cured within such thirty (30) calendar day period, the defaulting party shall not be in default hereunder if it commences to cure such non-monetary default within such thirty calendar (30) day period and prosecutes the cure to completion in good faith and with due diligence. In the event of a default hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages.

13. Binding Effect: Assignment and Subletting.

- (a) This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, only upon Landlord's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. Landlord shall have thirty (30) business days to evaluate the suitability of any proposed assignee and Tenant shall reasonably cooperate to provide Landlord with information requested by Landlord regarding suitability of any proposed assignee. If Tenant assigns its entire interest in this Lease to a party approved by Landlord that expressly assumes in writing all obligations of Tenant under this Lease arising after the effective date of the assignment, Tenant shall be released or discharged from all of its covenants and obligations under this Lease, except such obligations as shall have accrued or occurred prior to the effective date of any such assignment or transfer, and Landlord agrees to look solely to Tenant's assignee for performance of such obligations. If there are outstanding obligations of Tenant at time of assignment, Tenant shall list all outstanding obligations and Assignee will take on performance of those outstanding obligations.

- (b) Landlord may transfer the fee interest in the Premises to any party at any time so long as the assignee assumes all of Landlord's obligations under the PCMMP (with whatever approval may be required by ME DEP), this Lease, any easements granted to Tenant (as applicable) and any consents granted to Tenant's lenders. Landlord shall provide written notice to Tenant at least ten (10) days prior to any proposed transfer of its fee interest in the Premises. If Landlord incurs legal expenses relating to any such assignment or subletting of this Lease, as instigated by Tenant, Tenant shall pay to Landlord the cost of any reasonable, out-of-pocket legal expenses incurred by Landlord.

14. Indemnifications. Except to the extent caused by Landlord, its agents, servants or employees ("Landlord Parties"), Tenant agrees to indemnify and hold Landlord and the Landlord Parties harmless from any and all damages or claims which any Landlord Party may be compelled to pay on account of third party claims due to injuries to person or property on the Premises where the aforesaid injuries are caused by the negligence or willful misconduct of Tenant, its owners, agents, servants or employees ("Tenant Parties"), or by Tenant's breach of this Lease. Further, Landlord will be indemnified by Tenant for fines, penalties, remediation costs, legal fees and costs imposed by Maine DEP or any other state or federal agency for violations of the post-closure order and post closure monitoring and maintenance plan that are caused by Tenant's negligent or intentional conduct. Except to the extent caused by Tenant or its owners, agents, servants or employees ("Tenant Parties"), Landlord agrees to indemnify and hold Tenant and the Tenant Parties harmless from any and all damages or claims which any Tenant Party may be compelled to pay on account of third party claims due to injuries to person or property on the Premises or Landlord's other property where the aforesaid injuries are caused by the negligence or willful misconduct of Landlord or the Landlord Parties, or by Landlord's breach of this Lease.

15. Limitation of Liability. IN NO EVENT SHALL LANDLORD BE LIABLE TO TENANT OR ANY OTHER PERSON OR ENTITY FOR ANY LOST REVENUE, LOST PROFITS, LOSS OF USE, OR INDIRECT, PUNITIVE, INCIDENTAL, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING FROM THIS AGREEMENT AND/OR FROM TENANT'S USE OR NONUSE OF LAND, EVEN IF LANDLORD HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, LANDLORD'S AGGREGATE LIABILITIES UNDER THIS AGREEMENT OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND THE PERSON OR ENTITY BRINGING THE ACTION, SHALL BE LIMITED TO DAMAGES NOT TO EXCEED THE TOTAL AMOUNT PAID AND PAYABLE BY TENANT UNDER THIS AGREEMENT FOR THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO LIABILITY (OR IN THE CASE THAT 12 MONTHS HAS NOT YET PASSED, AN AMOUNT THAT WOULD BE EQUAL TO 12 MONTHS OF PAYMENTS).

16. Quiet Enjoyment. With the exception of any Permitted Encumbrances as described herein, Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease (beyond any applicable notice and cure periods), it will defend the right of possession to the Premises for Tenant against all parties whomsoever for the entire term hereof, and that Tenant shall have peaceable and quiet possession of the Premises during the Term without hindrance or molestation.

17. Hazardous Substances.

- (a) Tenant is aware of and acknowledges the presence of the constituents that may have been buried in the landfilled waste at the site and may release into groundwater that is monitored by Landlord under the approved PCMMP dated _____ (as may be amended in the future) and attached hereto as Exhibit C. Except as set forth in Section 17 (c) below, Tenant is not responsible for any Hazardous Substances at the Premises but is responsible to maintain the conditions of the PCMMP and the Post-Closure Use permit issued by ME DEP. If either party obtains knowledge of the existence of any newly identified Hazardous Substances on the Premises, such party will immediately notify the other party of such fact and Landlord shall take the necessary measures required to ensure that the Hazardous Substances are remediated or rendered harmless unless the newly identified Hazardous Substances are introduced to the Premises by Tenant wherein Tenant shall take the necessary measures required to remediate or render harmless with the prior approval of Landlord.
- (b) To the fullest extent permitted by law and subject to Section 14 and 15, Landlord shall indemnify, defend and hold harmless Tenant and the Tenant Parties, from and against any and all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Substances at the Premises present on the Effective Date.
- (c) Tenant shall not transport, store, discard, or use any hazardous substances on the Premises without written prior approval from the Landlord. Notwithstanding the preceding provisions of this Section 17, Landlord is not responsible for Hazardous Substances introduced to the Premises by Tenant or any Tenant Parties or in any way related to or resulting from Tenant's use of Land. Tenant shall indemnify, defend and hold harmless Landlord and its owners, agents, servants or employees from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Substances introduced to the Land in accordance with this section 17 (c). "Hazardous Substances"

means any hazardous or toxic substances, materials and wastes, pollutants, and contaminants which are regulated or are classified as hazardous or toxic by any governmental authority having jurisdiction over the Premises, including, but not limited to, those substances included in the definitions of hazardous substances, hazardous materials, "Toxic Substances," "Hazardous Waste," "Solid Waste," "Pollutant" or "Contaminant" in any applicable federal, state, local or other applicable law pertaining to public or worker health, welfare or safety or the environment.

18. **Waiver.** The waiver by any party of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other covenant or agreement herein contained.
19. **Decommissioning Plan.** By December 31, 2022, Tenant will submit to the Maine Department of Environmental Protection, with a copy to Landlord, a decommissioning plan that includes a description of the trigger for implementing the decommissioning, a description of the work required, an estimate of decommissioning costs, a schedule for contributions to its decommissioning fund, and a demonstration of financial assurance. Prior to the start of construction, Tenant will submit, to the Maine DEP for review and approval, a financial assurance mechanism for the decommissioning plan and means to re-evaluate the decommissioning cost and financial assurance at least every five years. Landlord will be provided a copy of the decommissioning plan at the time of submission and at every five year interval when a plan is submitted by Tenant for re-evaluation. At least every five years after the start of construction, updated proof of acceptable financial assurance must be submitted to the Maine DEP for review and approval, with copies provided to Landlord. Prior to the commencement of construction, Tenant must provide evidence to Landlord that it has provided acceptable financial assurance to the Maine DEP.
20. **Possession After Termination.** If Tenant shall fail to vacate and surrender the possession of the Premises at the termination of this Lease and return the site to its original condition, Landlord shall be entitled to recover from Tenant damages of One Million Dollars (\$1,000,000.00) without the necessity of proving actual damages in order for Landlord to return the site to its original condition. Nothing contained herein shall be construed to prevent Landlord from seeking and recovering actual damages in excess of \$1MM sustained by Landlord as a result of Tenant's breach. In addition, Tenant shall provide to Landlord a surety or irrevocable Letter of Credit acceptable to Landlord in the amount of \$1,000,000 to cover the cost of decommissioning in the event Tenant files bankruptcy in the future. Landlord may also have the right to salvage value of the solar system in the event Tenant does not conduct the decommissioning of the system and/or specifically enforce Tenant's obligation to decommission and/or bring a suit for damages and/or pursue any other remedies available at law or in equity.

21. Notices. All notices, elections, demands, requests, payments and other communications hereunder shall be in writing, signed by the party making the same and shall be sent by certified or registered United States mail, postage prepaid, or by national overnight courier service which provides tracking and acknowledgement of receipts, addressed to:

To Landlord:
Town of Skowhegan

To Tenant:
BD Solar Skowhegan, LLC
Attn: Nicholas Mazuroski
622 Congress Street
Suite 202
Portland, ME 04101

or at such other address as may hereafter be designated in writing by either party hereto. The time and date on which mail is postmarked shall be the time and date on which such communication is deemed to have been given.

22. Memorandum of Lease. Landlord and Tenant agree that this entire Lease shall not be recorded. However, promptly after the Effective Date of this Lease, Landlord and Tenant shall execute and record (to be recorded at Tenant's expense) a memorandum of this Lease, specifying the Effective Date, the Expiration Date, the Renewal Terms granted herein, the easements granted herein, the rights granted to Finance Parties (defined in Section 31(b)) herein and such other provisions hereof as required by law or as the parties may mutually agree to incorporate therein, which memorandum of lease shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder. The memorandum of lease shall be recorded in the Official Records of the County in which the Land is located. Landlord and Tenant agree to execute and record any amendment or supplement to the memorandum of lease that may be reasonably requested by either Party to specify any date or legal description that may be determined or become applicable after the initial memorandum of the lease is prepared.

23. Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of Maine.

24. Invalidity of Particular Provisions. If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

25. Non-Disturbance Agreement. No later than the Effective Date, Landlord shall provide to Tenant a Non-Disturbance Agreement in accordance with Section 31

from any and all current beneficiaries of mortgages/deeds of trust, or any other holders of liens on or superior interests in the Land or any portion thereof, whereby each such beneficiary and lienholder agrees not to disturb Tenant's rights under this Lease in accordance with Section 31.

26. Landlord's Representations, Warranties, and Covenants. Tenant acknowledges that Premises are being leased “as is”, making no representations as to the condition of the site, suitability for Tenant’s intended use, zoning, etc. Landlord hereby agrees with, and warrants and represents to Tenant as follows: (i) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof without the consent or joinder of any other party; (ii) the Premises incorporate a known manufacturing waste landfill that is regulated under a Solid Waste Closure Order # _____, _____ and Minor Revisions dated _____ and _____ and is monitored and maintained by Landlord as required in a PCMMP, as approved by the state of Maine. The Premises and Landlord’s larger property of which the Premises are a part are operated in compliance with any and all applicable laws, rules, regulations and recorded documents; (iii) Landlord has not received any notice of condemnation, zoning change or legal noncompliance relating to the Premises or Landlord’s larger property of which the Premises are a part that has not been addressed to the satisfaction of ME DEP; (iv) Landlord will not institute or consent to any rezoning of the Premises during the Term without the prior written consent of Tenant; (v) Except as expressly stated in this Agreement, Landlord shall not further encumber the title to the Premises during the Term in a manner that would materially and adversely affect Tenant or the Intended Use; (vi) Landlord shall not take any action to impair and shall not cause or permit any property owned and controlled by Landlord in the vicinity of the Premises, or any uses or improvements thereon, to impair Tenant's use of the Premises (beyond any impairment caused conditions which may already exist as of the Effective Date) (for example, and without limiting the generality of the foregoing, Landlord shall not cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon after the Effective Date that may obstruct the sunlight that otherwise would reach the Premises, or that may cast shade or shadows upon the Premises or any portion thereof so long as Landlord owns and controls the property at issue so as to have the power to control or stop such usage); (vii) to Landlord's actual knowledge, neither Landlord nor its tenants or predecessors in title have used, manufactured, stored or released hazardous substances on, in or under the Premises, other than (i) what may be a constituent of the manufacturing waste that has been landfilled at the site or is contained in leachate that is collected or (ii) anything revealed or disclosed in any reports or information provided by Landlord to Tenant in connection with Tenant's entering into this Lease or (iii) any matter disclosed in any public filings or public reports, including all filings, reports, findings and other information submitted to and/or on file with any governmental or public agency or authority with respect to the Landfill Matters; (viii) there are no service or maintenance contracts affecting the Premises that would materially interfere with the Solar Facility; (ix) there are no delinquent or outstanding assessments, liens or

other impositions levied or assessed against the Premises or the larger property of which the Premises are a part; (x) Landlord is not in the hands of a receiver nor is an application for such a receiver pending; (xi) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy.

27. Tenant's Covenants Agreements and understanding. Tenant will, at Tenant's sole cost and expense, comply with all laws, standards, rules, codes, statutes, and regulations which (i) relate to the Project and all activities conducted on the Premises by Tenant or on behalf of Tenant; (ii) arise by virtue of any improvements or other alterations of the Premises made by or caused by Tenant. Tenant shall not perform any acts or carry on any practices which may materially injure the Premises or be a nuisance, disturbance or menace to neighbors or other tenants, or perform other actions that materially adversely impacts Landlord's rights or the value of the Premises. Tenant accepts this Lease subject to (i) all rights, easements, covenant, conditions, restrictions, or other encumbrances which exist as of the date hereof (the "Permitted Encumbrances"). Landlord makes no representation or warranty as to any Permitted Encumbrance on Tenant's rights hereunder.

28. Brokerage Commission. Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify, defend and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent other than the above-referenced broker.

29. Access. Landlord shall grant Tenant access. Tenant will ensure such access does not affect the condition of Landlord's larger property and agrees to replace or restore any part of Landlord's larger property, including but not limited to the Landfill cap and leachate pipeline, to a condition equal or superior to the condition it was in prior to Landlord accessing the property. "Access" as used herein shall include access by foot or vehicle and the placement of utilities. Landlord and agents of Landlord shall be allowed access to the Premises (and Landlord's larger property of which Premises are a part if applicable) to conduct inspections, monitoring and maintenance of the landfill property, as required under the Landlord's Post Closure Order from the state of Maine and/or for any other purposes contemplated hereunder. Landlord will notify Tenant prior to entering the Premises except in emergencies. Landlord agrees that tenant may file and prosecute applications for rezoning, variances, land use approvals or other approvals required by Tenant to operate the Premises for the Intended Use, subject to Landlord's prior approval thereof, such approval not to be unreasonably withheld or delayed. Landlord agrees to join such approved applications or other documents, and to take such other actions as are reasonably required to allow Tenant to obtain such approvals. Tenant shall be responsible for

all costs and fees associated with all such re-zonings, variances and/or land use approvals.

30. **Confidentiality.** Each Party acknowledges that the receiving Party may become privy to confidential information of the disclosing Party, in addition to information regarding the terms of this Lease. Both Parties therefore agree to take all steps to ensure that any confidential information with regard to either Party, either Party's proposed use of the Land and improvements thereon and/or to this transaction, shall remain confidential and shall not be disclosed or revealed to outside sources by its employees, officers, agents, counsel, accountants or representatives except when reasonably necessary. The provisions of this paragraph shall survive three (3) years past termination of this Lease. The obligations of confidentiality shall not apply to information which the receiving Party can document: (a) at the time of disclosure was generally known to the public or, after such disclosure, became generally known to the public other than by a breach of this Agreement by the receiving Party; (b) was already in the possession of the receiving Party at the time of such disclosure without an obligation of confidentiality; (c) was later received on a nonconfidential basis by the receiving Party from a third party having the right to impart such Information; or (d) is developed by an employee of the receiving Party who did not have access to the Information. Information shall not be deemed to be within one or more of the foregoing exceptions merely because any part of such Information is embodied in general disclosures or because individual features, components or combinations are now or hereafter become publicly known. Neither party is expected to keep confidential information necessary for public approval of this Lease and related documents or information contained in records determined to be public records under the Freedom of Access Act – Title 1 MRS §§ 400 et seq.

31. **Estoppel.** Landlord and Tenant shall from time to time, upon not less than fifteen (15) days prior notice, submit to the other party, or to any person designated by the other party, a statement in writing, in the form submitted to the other party, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), that to the knowledge of that party no uncured default exists hereunder (or if such uncured default does exist, specifying the same), the dates to which the Rent and other sums and charges payable hereunder have been paid, that the other party has no claims against the requesting party and no defenses or offsets to rental except for the continuing obligations under this Lease (or if the other party has any such claims, defenses or offsets, specifying the same), and any other information concerning this Lease as the requesting party reasonably requests.

32. **Provisions Benefitting Lenders and Finance Parties.**

- (a) Landlord may enter into financing arrangements with third-party finance providers (each a "Landlord's Lender") with respect to Landlord's interests in and to the Premises and Landlord's adjacent property; provided however, that prior to executing any mortgage,

lien or financing on the Premises or Landlord's adjacent property, Landlord shall deliver (and Tenant shall also execute) to Tenant a Non-Disturbance Agreement from each party that holds (or will hold) a lien on any portion of the Premises, or has other rights, that might interfere with Tenant's rights under this Lease. All Non-Disturbance Agreements obtained by Landlord pursuant to this Section (a) shall be in a form reasonably acceptable to Landlord, Tenant and any Landlord's Lender, and shall be in a form that may be recorded following its execution. "Non-Disturbance Agreement" shall mean an agreement between Tenant, Landlord and Landlord's Lender that provides, among other customary provisions, that (A) the Tenant's rights under this Lease shall be subordinate to the Landlord's Lender's rights under its lien (but Landlord's Lender shall have the right at any time to subordinate such lien to Tenant's rights under this Lease) provided that (i) such Landlord's Lender shall acknowledge, confirm and disclaim any interest in Tenant's Personal Property so long as Tenant is not in default under this Lease, (ii) the Landlord's Lender shall agree not to disturb Tenant's possession or rights under this Lease so long as Tenant is not in default under this Lease; (B) Tenant shall attorn to any Landlord's Lender or any other party who succeeds to the interest of Landlord under this Lease by foreclosure or otherwise by or through Landlord's Lender, and all rights and obligations under this Lease shall continue as though the interest of Landlord had not terminated; and (C) notice shall be provided to Landlord's Lender by Tenant of any alleged defaults by Landlord under this Lease, with an opportunity to cure such default by Landlord's Lender of Landlord's Lender so desires. The above provisions requiring a Non-Disturbance Agreement for Tenant's benefit shall also apply as to any current Landlord Lender, which agreement shall be delivered to Tenant within thirty (30) days of the Effective Date of this Lease. Each party also agrees to execute and deliver to the other party, reasonable estoppel certificates or other documents reasonably necessary to satisfy a Landlord's Lender or a Finance Party of Tenant.

- (b) Landlord recognizes that Tenant may enter into a financing arrangement for the Tenant's Property with a bona-fide third party finance provider in connection with a financing (which term shall include any refinancing), including a tax equity financing or a financing by sale-and-leaseback, in which the lender acquires a lien of record covering Tenant's leasehold estate hereunder (each, a "Finance Party"). Such financing arrangements with a Finance Party may include but shall not be limited to the granting of a leasehold deed of trust or mortgage encumbering the leasehold estate created by this Lease (the "Leasehold Estate"). A Finance Party holding a leasehold deed of trust or mortgage encumbering the Leasehold Estate is referred to herein as a "Leasehold Mortgagee". Landlord

agrees to reasonably cooperate with Tenant's financing of Tenant's Premises and Solar Facility, including, but not limited to, the following:

- i. If any Leasehold Mortgagee requires any formal documents pertaining to this Lease or any, non-disturbance and attornment agreement or other documents pertaining to this Lease, then Landlord shall, at Tenant's or any Leasehold Mortgagee's request, promptly work with Leasehold Mortgagee to deliver to Tenant such instruments, in recordable form if appropriate, as such Leasehold Mortgagee shall require so long as such documents are reasonably acceptable to Landlord, do not impair Landlord's fee simple interest in the Land and do not change or abridge in any material way any of Landlord's rights and remedies under the Lease. If any modifications are requested by Leasehold Mortgagee, Landlord will work with Leasehold Mortgagee in good faith to come to an agreement on such modifications. For clarity, Landlord shall not be required to agree to any modifications, and no modifications will be agreed to that modifies Rent, the Term, or Termination, or adversely affects Landlord's rights, increases Landlord's or any Landlord's Lender's obligations, or decreases Tenant's obligations under this Lease. Tenant shall bear all cost and expense incurred in connection herewith, including, without limitation, Landlord's reasonable attorneys' fees and costs.
- ii. Landlord agrees to provide written notice to a Finance Party, provided that Landlord shall have previously received written notice of a Finance Party's designated address, of any default of Tenant under the Lease. If any such Finance Party shall request, Landlord shall confirm to such party that such party is or would be, upon closing of its financing or acquisition of an existing Leasehold Mortgage, a) that such Leasehold Mortgagee is entitled to the protections provided in this Lease to Leasehold Mortgagees and that no amendment hereafter to this Lease shall diminish any rights granted hereunder to Leasehold Mortgagees. In the event that Tenant fails to cure the default after any required notice and within the cure period set forth above, Landlord shall provide the Finance Parties with written notice that Tenant has failed to cure the default. All Finance Parties shall be granted thirty (30) days from receipt of the second notice with respect to any defaults that do not involve the Landfill cap or leachate pipeline to cure the default by Tenant under the Lease; provided that in no event shall any Finance Party be obligated to cure any such default, and provided further that defaults under the thirty (30)-day cure period may be extended upon written approval by Landlord for the time reasonably required to complete such cure by Finance Party, including the time required for the Finance Party to perfect its right to cure such non-monetary default by obtaining possession of Tenant's Property (including possession

by a receiver) or by instituting foreclosure proceedings, provided the Finance Party acts with reasonable and continuous diligence. The Finance Party shall have the absolute right to substitute itself for Tenant and perform the duties of Tenant hereunder for purposes of curing such defaults. Landlord expressly consents to such substitution, agrees to accept such performance in accordance with the terms of this Lease, and authorizes the Finance Party (or its employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all the rights, privileges and obligations of the original Tenant hereunder. Landlord shall not, and shall have no right to, terminate this Lease prior to expiration of the cure periods available to a Finance Party as set forth above. For defaults involving the Landfill cap or leachate pipeline that are not corrected within the five (5) business days after the defaulting party's receipt of written notice of such failure as outlined in Section 12, Landlord is under no obligation to allow Finance Party time to cure the default and may, at its option, pursue any and all remedies available at law or in equity, including, but not limited to termination of this Lease.

- iii. Subject to the terms and conditions hereof, Landlord recognizes and acknowledges that any claim or claims ("Claims") that Finance Party has or may have against Tenant's Property located at the Premises and/or the Landlord's adjacent property, if any, and to which Tenant at any time has granted or will grant a security interest to Finance Party (all such property and the records relating thereto shall be hereafter called the "Collateral" by virtue of any lien or security interest are superior to any lien, security interest, or claim of any nature that Landlord now has or may hereafter have to such Collateral by statute, rule, regulation, common law, agreement or otherwise. Landlord further agrees to notify any purchaser of the Premises and/or the Landlord's adjacent property and any subsequent mortgagee or other encumbrance holder of the existence of the foregoing, which shall be binding upon the executors, administrators, successors and transferees of Landlord, and shall inure to the benefit of the successors and assigns of Finance Party. Landlord agrees to execute such documents as may be reasonably required by Finance Party to evidence the foregoing.
- iv. To the extent actions or activities of Finance Party or its agents do not interfere with the use of Land by Landlord or any other tenant, Landlord agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent Finance Party from the Premises for the purpose of inspecting the Collateral or for the exercise of any of Finance Party's rights (but any such rights shall cease in any case thirty days after a termination of this Lease pursuant to the terms hereof).
- v. A Leasehold Mortgagee shall have the right, subject to the terms and

conditions of this Lease: (a) to assign its security interest; (b) to enforce its lien and acquire title to the Leasehold Estate by any lawful means; (c) to take possession of Tenant's Property, including its Solar Facility, the Leasehold Estate or any portion thereof and to perform all obligations to be performed by Tenant hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the Leasehold Estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the Leasehold Estate to a third party upon Landlord's written consent.

- vi.** During any period of possession of the Premises by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all monetary charges payable by Tenant hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period and cure all defaults in accordance with Section 12 and 31 (b)(ii) above. Following acquisition of Tenant's Leasehold Estate by the Leasehold Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale and subject to the provisions of this Agreement, this Lease shall continue in full force and effect.
- vii.** Neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Lease as long as the rent and all other obligations of Tenant hereunder are paid or performed by or on behalf of Tenant or the Leasehold Mortgagee in accordance with the terms of this Lease. For avoidance of doubt, rent and all other obligations of Tenant must be current within ten (10) days of tenant's filing for bankruptcy or insolvency, or Landlord may terminate this Lease. Nothing herein shall be construed to extend this Lease beyond the Term or to require a Leasehold Mortgagee to continue foreclosure proceedings after the default has been cured.
- viii.** No voluntary surrender, termination or cancellation of this Lease by Tenant, and no modification of this Lease by Tenant, shall be binding upon a Finance Party without the written consent of the Finance Party, which consent shall not be unreasonably withheld, conditioned or delayed. No written consent shall be required from Finance Party for Landlord's voluntary surrender, termination, cancellation, or modification of the Lease.
- ix.** Upon any bankruptcy or other insolvency proceeding against Landlord during the Term of this Lease, no court ordered sale of the fee interest in the Premises, under United States Bankruptcy Code Section 363 or otherwise, shall be free of Tenant's leasehold interest, and Tenant and any Finance Party shall each have the right to object to any proposed court ordered sale free of Tenant's leasehold interest (unless this Lease has otherwise terminated pursuant to the terms

hereof after applicable notice and cure periods).

- 33. Nature and Extent of Agreement.** This instrument contains the complete agreement of the parties regarding the terms and conditions of the lease of the Premises, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of landlord and tenant between the parties as to the Premises; and nothing in this Lease shall in any way be construed to impose upon either party any obligations or restrictions not expressly set forth in this Lease.
- 34. Time is of the Essence.** Time is of the essence as the performance of all the covenants, conditions and agreements of this Lease.
- 35. Waiver.** Any waiver by Landlord of the strict performance of any of the provisions of this Lease shall not be deemed to be a waiver of subsequent breaches of the same character or of a different character, occurring either before or subsequent to such waiver, and shall not prejudice Landlord's right to require strict performance of the same provision in the future or of any other provision of this Lease.
- 36. Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered.

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the later of the dates indicated below.

LANDLORD:

By: _____

Printed Name/Title: _____

Date: _____

TENANT:

BD Solar Skowhegan, LLC

By: _____

Printed Name/Title: Nicholas Mazuroski, Manager

Date: _____

Exhibit A

Depiction of the Land

Exhibit B

Legal Description of the Land

Exhibit C

Post Closure Monitoring and Maintenance Plan (PCMMP)