

DRAFT OPERATING AGREEMENT
for Member Managed
Thetford Strafford Community Solar LLC

INTRODUCTION

This Operating Agreement (“Agreement”) is made and entered into by and between Thetford Strafford Community Solar LLC (“the Company”) and the undersigned as an initial member (“Member”) of the Company as set forth in Business Purpose and Members herewith.

The undersigned hereby adopt the following Agreement and, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, and intended to be legally bound hereby, the undersigned parties agree as follows:

BACKGROUND

- a. The parties are organizing and operating a limited liability company subject to the conditions in this Agreement, in order to manage a net metered community solar electric facility (“Facility”).
- b. The Members own the Facility pursuant to the conditions of this Agreement.
- c. The Facility is intended to offset Members’ electric bill and reduce carbon emissions from the State of Vermont.
- d. The parties have agreed to make certain payments to the Company in order to pay for the Facility’s operating expenses.

ARTICLE I. ORGANIZATION

Name: The name of the Company is Thetford Strafford Community Solar LLC.

Formation: The Company was granted Articles of Organization as a Limited Liability Company by the Office of Secretary of State, State of Vermont, effective March 8, 2016. The rights and obligations of the Members and the Company shall be as provided under the Articles of Organization and this Agreement.

Principal Office: The principal office of the Company shall be 4 Kibling Hill Road, Strafford, VT 05072 or such address as may be designated from time to time by its members or their representative officers.

Purpose of Formation: The Company is organized to develop, install, operate and manage the solar array, and to do any and all things necessary, convenient, or incidental to that purpose.

Initial Registered Agent and Office: The name and address of the initial registered agent of the Company shall be Dorothy Wolfe, PO Box 161, Strafford, VT 05072.

ARTICLE II. BUSINESS PURPOSE

Business Purpose: The purpose of the Company is to serve as an entity that represents the common interests of the members of the Company in managing certain

administrative and financial matters on their behalf in connection with their separate acquisition of solar panels and equipment from Wolfe Energy LLC (the "Developer") or another company.

Such solar panels are part of a 148.2 kW AC community scale solar photovoltaic array in which participants separately purchase a percentage of the Facility and, upon becoming members of the Company, are also entitled to a percentage share of the production from the system's solar array, net of allocable expenses. Initial members of the Company are those who buy into a system of solar panels and its components, including installation, permitting and monitoring from the Developer. The electricity production of the solar panels in the Facility is fed into the Green Mountain Power Corporation's (the "Utility") grid and the Utility issues credits on a pro-rata basis to owners' meters via net metering to offset owners' electric use.

Members of the Company, as part of the initial members' purchase of a "turnkey" system of solar panels and components from the Developer, also own approximately 11% of the Facility, the electrical production from which is fed into the Utility grid and the Utility issues credits to the non-profit entity (ies) who in turn pays the Company 90% of the value of the net metering credits. The Company will use these funds to pay expenses, including land lease payments for use of the site.

ARTICLE III. MEMBERS

Members: Members of the Company are owners of solar panels in the Facility.

Initial Members: The names, addresses and emails of the initial members are listed in Exhibit A.

Liability of Members: No Member shall be liable, responsible, or accountable, in damages or otherwise, to any other Member or to the Company for any act performed by the Member with respect to Company matters, except for fraud, gross negligence, or an intentional breach of this Agreement.

The Company and each Member shall each defend, save harmless, and indemnify the other from and against any claim, proceeding (whether legal or administrative), and expenses that are related to this Agreement and that are (i) caused by an act or omission of the indemnifying party or (ii) sustained on or caused by equipment or facilities, or the use thereof, that the indemnifying party owns or controls.

Each party agrees to waive any claim against the other for indirect, incidental, consequential or punitive damages, and neither party shall be liable to the other for or as a result of any proceeding in which rates are reviewed or established for either party by the Public Service Board or similarly authorized entity. In no event shall the Company be liable under this Agreement if the Facility fails to generate electricity or Net Metering Credits, as a result of the Company failing to obtain or maintain any necessary permit, license or governmental approval, or for any error or omission in any filing or instructions submitted by or on behalf of the Company, when acting as the Administrator of the Group Net Metering Arrangement to the Utility or any

governmental entity.

The debts, obligations and liabilities of the Company, a limited liability company, are solely the debts, obligations and liabilities of the Company. A member or manager is not personally liable for any debt, obligation or liability of the Company solely by reason of being or acting as a member or manager. (Vermont Statutes Annotated, Title 11 Section 3043(a-b)).

ARTICLE IV. MANAGEMENT

Member Managed: The Company will be a member managed limited liability corporation. As such, the management of the Company will be vested in the members pursuant to 11 V.S.A. § 3054(a). Each member has equal rights in the management and conduct of the Company's business, and any matter relating to the business of the Company may be decided by a majority of the members of a duly called meeting. Each member will have one (1) vote regardless of the percentage of the Facility owned.

General Powers: Members, acting together on behalf of the Company, shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated, and to make all decisions affecting such business and affairs, including, without limitation, the power to:

- a. Enter into contract with the landowner of 7366 VT Route 113 in Post Mills, Vermont or another property, for hosting the site of the Facility.
- b. Contract for liability and casualty insurance on the Facility.
- c. Administer the payment of applicable state or other tax obligations on the Facility.
- d. Administer the collection from members of annual operating expense fees and the payment of such amounts due for tax, insurance, maintenance, service and other operating costs of the Facility.
- e. Coordinate net metering and other arrangements with the Utility.

Representative Management: Members shall appoint a board of officers to serve as their representative management and the following provisions shall apply:

- a. Officers: The officers shall act in the name of the Company and shall supervise its operation under the direction and management of the members, as further described below. The officers of the Company initially shall consist of a registered agent who is the presiding officer pro-tem, a treasurer, and a secretary, and/or other officers or agents as may be elected and appointed by the members.
- b. Election and term of office: The officers of the Company shall be elected annually by the members by a majority vote. The members of the Company shall have the right to replace the officers of the Company at any time during the year in the event of the relocation, illness, or death of an officer, or for any reason that may come

up, for the term determined and by a majority vote.

- c. Authority: The initial registered agent, treasurer, and secretary may act for and on behalf of the Company and shall have the power and authority to bind the Company in all transaction and business dealings of any kind except as otherwise provided in this Agreement.
- d. Treasurer: The treasurer shall be the chief financial officer of the Company. The treasurer shall not be required to give a bond for the faithful discharge of his/her duties. The treasurer shall: (i) have charge and custody of and be responsible for all funds and securities of the Company; (ii) receive and give receipts for moneys due and payable to Company from any source whatsoever, and deposit all such moneys in the name of Company in such banks, trust companies, or other depositories as shall be authorized by members of Company; (iii) administer the collection from members of annual operating expense fees and the payment of such amounts due for tax, insurance, maintenance, service, and other operating costs; and (iv) in general perform such other duties as from time to time may be assigned by the members.
- e. Secretary: The secretary shall: (i) be custodian of the Company records; (ii) keep a register of name and addresses of members; (iii) administer net metering arrangements with the Utility; and (iv) in general perform such other duties as from time to time may be assigned by the members.

ARTICLE V. CONTRIBUTIONS, PROFITS & LOSSES, AND DISTRIBUTIONS

Contributions and interest of members: Members shall make an initial contribution of \$100 per share to the Company. Members' only contributions to the Company are periodic contributions for operating expenses. Members will own only a pro-rata percentage interest of such contributions, net of expenses. Each member purchases and owns a percentage of the Facility separately and independently from the Company. The Company has no ownership interest in its members' percentage of the Facility or in its' electricity production or net metering credits. The Company exists as a separate legal entity solely to represent the common interests of the members in managing certain administrative or financial matters on their behalf in connection with their acquisition of a percentage of the Facility.

Allocation of Net Metering Credits to Non-Profit Entity (ies): For purposes of this Agreement, Members agree to allocate approximately eleven percent (11%) of the total electric output of the power production of the Facility, in the form of net metering credits, to the non-profit entity (ies) who in turn will pay the Company 90% of the value of the net-metering credits which the Company may use to pay expenses associated with the Facility, including the land lease payments for the use of the site. Such net metering credits shall be credited to the non-profit's Green Mountain Power Account (or any successive account designated by the non-profit).

Profits & losses, and distributions: The Company intends to acquire no assets, other than those needed to provide administrative and operating support to the Facility, including bank accounts, office equipment, and supplies. Operations of the Company are administrative in nature and are expected to be managed at a near-zero profit. Because the

Company shall hold only minimal capital and interest, other than escrow for maintenance and decommissioning, there will be no distributions of moneys to the members.

Tax Status and Tax Credits: The Company shall have pass-through taxation allowing company profits to be taxed at individual rates. Any tax credits of the Company shall be allocated to the members in proportion to their Percentage Interests as explained in the Allocation Instruction (Exhibit “C”).

Operating expenses and annual fees: Members are responsible for those expenses associated to liability and casualty insurance, state and municipal tax, maintenance and service, and other such expenses in connection with members’ ownership of solar panels and equipment in the Facility.

Members shall pay an annual operations expense fee for such expenses in such amount as may be determined from year to year by the treasurer. These contributions may accrue in expectation of future operating expenses and decommissioning. The treasurer shall also have the discretion and right to assess for unexpected or additional unplanned expenses during the year, should they occur, for any reason and as needed.

The annual operations expense fee and any additional expenses shall be pro-rated to members according to members’ ownership share of the Facility. Members operating expenses are due annually and must be paid via direct deposit to the Company’s operations account, unless an alternate method is agreed upon with the treasurer. If direct deposit or alternate payment is not received on time, members have sixty (60) days to make any required payment after request therefor. After sixty (60) days the Company shall have the right, among other remedies, and without any further demand to the member, to direct the Utility to halt net metering credits to such member and to reallocate them to the Company until the member is brought current.

ARTICLE VI. VOTING; CONSENT TO ACTION

Voting by members: Members shall be entitled to one vote on all matters, which provide for a vote of the members, regardless of the percentage of the Facility owned. Each member has equal rights in the management and conduct of the Company business, and any matter relating to the business of the company may be decided by a majority of the members present at a duly called meeting.

Meetings – General and Special: The Members shall hold duly called general meetings at least once a year. These meetings shall serve as a time to discuss matters related to the Facility. The date of the last meeting for any given year must be within six (6) months of the end of the fiscal year. The Secretary shall duly call the meeting by providing written or electronic notice of the meeting not less than 15 days nor more than 30 days before the meeting.

Upon Member request including a petition with written support from at least 25% of members or by decision of the officers, special meetings may be called in the interval between general meetings. The secretary shall provide written or electronic notice of the meeting not less than 15 days nor more than 30 days before the meeting. The notice shall

set the time, place and purpose of the meeting.

Meetings – written consent: Action of the members or officers may be accomplished with or without a meeting. If a meeting is held, evidence of the action shall be by minutes or resolution reflecting the action of the meeting, signed by a majority of the members present at the duly called meeting, or the secretary or such officer who may be designated. Action without a meeting may be evidenced by written or electronic consents signed by a majority of the members, or the secretary or such officer who may be designated.

ARTICLE VII. ASSIGNMENT OF MEMBERSHIP INTERESTS

Solar Energy Environmental Attributes: A net metered customer (“Net Metered Customer”) for the purposes of this Section, is defined as a Vermont electric consumer who receives net metered energy from the Facility, including the Non-Profit Entity.

Each Net Metered Customer shall agree to retire the environmental attributes of their net metered energy produced by the Facility. By retiring the attributes with the Utility, the green or renewable energy claims in regards to their net metered energy stay with the facility. Net Metered Customers shall not unbundle or separately sell the environmental attributes, including any renewable energy credits (RECs) or certificates, from the net-metered electricity.

Assignment of Membership Interests: A member may assign, transfer or sell their bundled interest in their solar panels in whole or in part to a qualified third party in the Utility territory.

Termination of Membership: Membership in the Company terminates and there are no further rights and obligations of the member under the Articles of Organization of the Company and this Agreement upon the occurrence of the assignment, transfer or sale of all of a member’s interest in solar panels in the Facility to a qualified third party.

Member Default: In the event that a member defaults on their loan agreement with a financial institution resulting in foreclosure of the member’s percentage interest in the Facility, the financial institution shall take possession and ownership of said membership and have the right to assign or sell their ownership share of the Facility to a qualified party.

Event of Default: With respect to any Member, a Member who fails to make any payment on the date such payment is due, and such failure continues for a period of sixty (60) days after the applicable due date, shall be considered to be in Default with respect to this Agreement.

Upon Default of this Agreement, the defaulting Member shall relinquish all rights to net metering credits. Defaulting Member’s net metering credits shall be distributed to any other member of the Company in exchange for payment of Defaulting Member’s owed payment. Defaulting Member’s net metering credits shall be redistributed for such a period of time as the defaulting Member remains delinquent with regard to the payment due. The Secretary shall notify the Utility of the new allocation schedule for disbursement of net metering credits.

Succession Members: The assignment, transfer or sale of a member's interest in the Facility in and of itself entitles the assignee, transferee or purchaser to become a member in the Company, with all the rights and obligations of the member under the Articles of Organization of the Company and this Agreement. The assignment, transfer or sale of a member's interest in their solar panels is subject to the following conditions:

- a. The Transferee is an existing customer of the Utility;
- b. The Transferee gives the Company its meter information
- c. The Transferor first gives the current Members the right to purchase their percentage of the Facility through written or electronic notice. If, after 30 days, no current Member is interested, the officers then approve assignment, transfer or sale of member's interest of the Facility to the new member (Right of First Refusal).

Responsibility in Assignment: Responsibility in the assignment, transfer or sale of a member's interest in their percentage of the Facility is the sole responsibility of the member and not the Company. The sole responsibility of the Company in the assignment of interest or ownership of a member's percentage of the Facility is, upon notice of such transfer of ownership by member, to notify the Utility of the change in credits to owners' meters via net metering.

ARTICLE VIII. DISPUTE RESOLUTION

The parties shall negotiate any breach or dispute ("Dispute") arising out of this Agreement. If the Dispute is not resolved through negotiation within thirty (30) days, it is hereby agreed that the dispute shall be submitted to binding arbitration in accordance with the rules then prevailing of the American Arbitration Association. The arbitrator's decision shall be final and binding, judgment may be entered thereon. The cost of any such arbitration shall be paid as determined by the arbitrators. The judgment rendered by the arbitrators may be entered into any court of competent jurisdiction.

ARTICLE VIV. ADDITIONAL PROVISIONS

In witness whereof, all members will sign and be bound to the terms of this agreement.

Member

By: _____

Date: _____

Signature:

Member #	Name	Address	Email

Exhibit “A”

Definitions

Capitalized terms used herein but not otherwise defined shall have the following meanings:

“Member” shall have the meaning given in the introductory paragraph to this Agreement.

“Member Meters” means all electricity Meters of the Member that are identified as a Member Meter in Exhibit “C”, unless the Member and the Company agree to include additional meters.

“Commissioning Date” means the date on which the Facility begins delivery of electricity to the Utility.

“Facility” shall have the meaning given to such term in the Background and shall include all equipment, facilities, and materials, including photovoltaic arrays, DC/AC inverters, wiring and other components included therein. The System excludes any part of the Members existing electrical systems that are owned or leased, operated, maintained and controlled by the Member, and interconnected with the Utility.

“Net Metering” means measuring the difference between the electricity supplied to a customer and the electricity fed back by a net metering system during the customer’s billing period.

“Net Metered Customer” means a retail electric consumer who uses a net metering system.

“Output” means all of the electricity the Facility produces, delivered to the Utility and allocated to the Member Meters, measured in kilowatt hours.

“Owner” means the owner of the land upon which the Facility is sited.

“Renewable Energy Credits (REC)” means all “tradeable renewable energy credits” as defined in 30 V.S.A. § 8002(8) associated with a single unit of energy that the Facility generates.

“Services” means any and all of the services the Company provides the Member pursuant to this Agreement.

“Site” means any and all real property in which the Company installs and constructs the Facility.

“Turnkey” means that the Developer will install and construct the Facility such that upon completion the Facility will be generating electricity and Net Metering Credits.

“Utility” means the retail electric company serving the Member. The Utility is currently Green Mountain Power.

Exhibit “B”

Description of Solar Generation Facility

The solar generation Facility currently under consideration consists of an array of photovoltaic panels with a facility- rated output of 148.2 kW AC and ground mounted on a fixed ground mounted rack facility located at 7366 VT Route 113, Post Mills, Vermont, Vermont.

Exhibit “C”
Allocation Instructions

The Company shall instruct the Utility to allocate credits for the kilowatt hours of electricity the Facility generates each month to the Meters set forth below:

The Members of the Company agree that approximately eleven percent (11%) of the total electric output of the Facility will be credited to the Non-Profit Entity’s Utility Account in return for payment of 90% of the value of the net-metering credits to cover Facility expenses, including payment to the Landowner for use of Facility site. Each Member’s percentage allocation will equal to approximately the following:

(1-0.11) X (Members kW/total kW capacity of the Facility)

Investments in the Facility shall be made in 960 watt DC shares, each made up of 3 panels at 320 Watts each. (Final wattage to be verified by the contractor.)

The Member and the Company may agree to add meters. The Utility shall allocate KWh on a percentage basis to each group member account.

Percentage Allocation	Account Name	Account #
%*		
%		
%		
%		
%		
%		

* The first line of this allocation schedule should be designated to the non-profit who will be purchasing the approximate 11% of the array’s net-metering credits at 90% of the value of the net-metering credits.