

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Agreement") is entered into as of the 15th day of September, 2020, by and among **GREEN DEVELOPMENT, LLC, WIND ENERGY DEVELOPMENT, LLC, MARK DEPASQUALE, JUNE DEPASQUALE, DIANE A. CAPWELL, WED COVENTRY TWO, LLC, WED COVENTRY FIVE, LLC, WED COVENTRY SIX, LLC, WED COVENTRY SEVEN, LLC, 394 CARR'S TRAIL REALTY, LLC, BRIAN WAGNER** and the **TOWN OF COVENTRY**. Green Development, LLC may be referred to as Green, Wind Energy Development, LLC may be referred to as Wind, Mark DePasquale may be referred to as M. DePasquale, June DePasquale may be referred to as J. DePasquale, Diane A. Capwell may be referred to as Capwell, WED Coventry Two, LLC may be referred to as WED Two, WED Coventry Five, LLC may be referred to as WED Five, WED Coventry Six, LLC may be referred to as WED Six, WED Coventry Seven, LLC may be referred to as WED Seven, 394 Carr's Trail Realty, LLC may be referred to as 394 Carr's, Brian Wagner may be referred to as Wagner and the Town of Coventry may be referred to as the Town. All parties to this Agreement may be collectively referred to as Parties, and each may be referred to individually as a Party.

WHEREAS, Green, (a/k/a Wind Energy Development, LLC), WED Two, WED Five, WED Six, WED Seven and 394 Carr's (hereinafter the "Green Entities") are Rhode Island limited liability companies with a principal place of business located at 2000 Chapel View Boulevard, Suite 500, Cranston, Rhode Island;

WHEREAS, Green, owned and operated by M. DePasquale, is a wind and solar energy developer which owns and operates solar panel and wind farms located in Rhode Island;

WHEREAS, M. DePasquale and J. DePasquale are natural persons residing in North Kingstown, Rhode Island and Capwell is a natural person residing in Coventry, Rhode Island;

WHEREAS, the Town is a municipal entity within the State of Rhode Island, as created by state law, and Wagner is a natural person who formerly served as the Assistant Planner for the Town;

WHEREAS, on May 30, 2018, WED Seven filed an appeal seeking reversal of the Zoning Board's November 29, 2017 decision denying WED Seven's application for a proposed Major Solar Installation project which lawsuit was docketed as *WED Coventry Seven, LLC v. Town of Coventry Zoning Board of Appeals, et al.*, KC-2018-0567 (hereinafter the "0567 Lawsuit") and that appeal has been denied;

WHEREAS, on June 18, 2018, Green, Wind and M. DePasquale filed a Complaint against the Town's building official, former town manager, clerk, solicitor, and finance director alleging that the Town violated the State's Access to Public Records Act which lawsuit was docketed as *Green Development, LLC, et al. v. Robert Assalone, et al.*, KC-2018-0660 (hereinafter the "0660 Lawsuit");

WHEREAS, on December 19, 2018, Capwell filed an appeal seeking reversal of the Zoning Board's November 7, 2018 decision upholding a June 6, 2018 notice of violation with respect to container boxes on Capwell's property which lawsuit was docketed as *Diane A. Capwell v. Town of Coventry Zoning Board of Appeals, et al.*, KC-2018-1418 (hereinafter the "1418 Lawsuit");

WHEREAS, on March 15, 2019, WED Two, WED Five and WED Six filed an appeal, seeking reversal of the Zoning Board's February 6, 2019 decision upholding a June 22, 2018 notice of violation (revised on July 11, 2018) with respect to Wind Turbine flicker which lawsuit was docketed as *WED Coventry Two, LLC, et al. v. Town of Coventry Zoning Board of Appeals, et al.*, KC-2019-0307 (hereinafter the "0307 Lawsuit");

WHEREAS, on November 8, 2019, the Town filed a Complaint against WED Two, WED Five and WED Six seeking to enforce the Town Zoning Board's February 6, 2019 decision upholding a June 22, 2018 notice of violation (revised on July 11, 2018) with respect to Wind Turbine flicker which lawsuit was docketed as *Town of Coventry v. WED Coventry Two, LLC, et al.*, KC-2019-1263 (hereinafter the "1263 Lawsuit");

WHEREAS, on November 8, 2019, the Town filed a Complaint against WED Seven, 394 Carr's, M. DePasquale and J. DePasquale seeking to enforce the Town Zoning Board's November 7, 2018 decision upholding a June 6, 2018 notice of violation with respect to container boxes on Capwell's property which lawsuit was docketed as *Town of Coventry v. WED Coventry Seven, LLC, et al.*, KC-2019-1267 (hereinafter the "1267 Lawsuit");

WHEREAS, on April 15, 2020, M. DePasquale, Green, WED Two, WED Five, WED Seven, and 394 Carr's filed a Complaint against the Town, its finance director and treasurer, its former assistant planner and five John Does alleging various constitutional violations, tortious interference with existing and prospective economic advantage and abuse of process which lawsuit was docketed as *Mark DePasquale, et al. v. Town of Coventry, et al.*, KC-2020-0353 (hereinafter the "0353 Lawsuit" and the 0567 Lawsuit, 0660 Lawsuit, 1418 Lawsuit, 0307 Lawsuit, 1263 Lawsuit, 1267 Lawsuit and 0353 Lawsuit shall be referred to herein as the "Green Lawsuits"); and

WHEREAS, on June 29, 2020, the Parties participated in a voluntary mediation with the Honorable Frank Williams (ret.) at the law offices of Adler Pollock & Sheehan, P.C. in Providence, Rhode Island after which the Parties came to an agreement in principle to resolve the claims and disputes in the Green Lawsuits.

NOW THEREFORE, in consideration of the above recitals and the payment, mutual promises and releases set forth below and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereto acknowledge, and intending to be legally bound, the Parties agree as follows:

1. **Payment by the Green Parties.** In full and final satisfaction of any and all claims held by the Town and in exchange for the promises made in Section 2 and in Section 3, the Green Entities hereby agree to pay the Town, or cause to be paid to the Town, the total sum of Eight

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Hundred and Two Thousand Dollars (\$802,000.00) (the "Settlement Payment") in two installments.

- a. **Non-refundable Portion.** Upon formal approval of this Agreement by vote of the Town Council and due execution by and delivery to all parties of this Agreement, a payment of \$146,000.00 shall be made immediately by the Green Entities to the Town (the "Non-refundable Portion"), in care of its counsel, Pierce Atwood, LLP. The Parties agree that this payment is non-refundable in all respects. The obligation to pay the non-refundable portion is not conditioned on any permits or approvals; provided that the Town shall not act in bad faith to obstruct the issuance of permits and approvals.
- b. **Settlement Payment Balance.** Upon formal approval of this Agreement by vote of the Town Council and due execution by and delivery to all parties of this Agreement, the balance of the Settlement Payment or \$656,000 ("Settlement Payment Balance") shall be placed in an escrow account, specifically the IOLTA/Client account of Orson and Brusini Ltd., of 144 Wayland Avenue, Providence, RI 02906 ("O&B"), which account does not earn interest, to be held by O&B as escrow agent. Proof of the deposit shall be provided promptly to the Town. The Settlement Payment Balance shall be released upon satisfaction of the condition precedent set forth in Section 2(b) of this Agreement, *viz.*, the Town's issuance of a building permit set forth in Section 2(b) of this Agreement and the expiration of the appeals period related thereto. If one or more appeals are taken, the Settlement Payment Balance shall remain in the escrow account until such appeals are fully and finally resolved or adjudicated in a manner such that the building permit issued pursuant to Section 2(b) below remains in full force and effect and no further appeals are permissible, at which point the Settlement Payment Balance shall be immediately released to the Town. If any such appeals are resolved or adjudicated in a manner such that the building permit issued pursuant to Section 2(b) below is no longer valid, the Town shall not be entitled to receive the Settlement Payment Balance, the Settlement Payment Balance will instead be returned to the Green Parties, and with the exception of the Non-refundable Portion..

1.1. The Parties agree that O&B represents the Green Entities, J. DePasquale, and M. DePasquale as legal counsel and that O&B shall not be disqualified from representing such parties in any dispute arising in connection with this Agreement. In the event of any dispute between the Parties regarding the disposition of the Settlement Payment, O&B shall be authorized to pay over said amount on receipt of either: (i) a letter or like document signed by all Parties directing the disposition of such funds and releasing O&B from any claims or liabilities related thereto; or (ii) an order of a court of competent jurisdiction directing the disposition thereof, or O&B may turn over the Settlement Payment to a court of competent jurisdiction pending resolution of said dispute. In the event that O&B is unable to deposit such amounts with the clerk of such

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court or is directed not to do so by any Party, O&B may commence an action for interpleader, the costs of which shall be borne by the Green Entities. O&B may act on any instrument or other writing believed by it, in good faith, to be genuine and to be signed and presented by the proper Party, and shall not be liable in connection with the performance of any duties imposed on O&B by the provisions of this Agreement, except for willful misconduct and/or gross negligence. O&B shall not be bound by any modification of this Agreement unless in writing and signed by all Parties, and if affecting O&B's duties hereunder, unless O&B shall have given prior written consent thereto.

2. **Non-Financial Terms.** With the exception of the Non-refundable Portion and release of all claims, the obligations of all Parties to perform under this Agreement are conditioned on satisfaction of the following.

(a) The Town Council shall approve:

- i. the WED Coventry Seven project (3.75 mW AC solar farm) with conservation easement described below subject to and conditioned upon the Town's administrative review described in Section 2(b) below;
- ii. a resolution approving the request for the merger of all three lots as depicted in Exhibit A;
- iii. a site plan depicting a conservation easement on the entirety of the property, except for certain separately-identified "out-zones" which shall be reserved for the 3.75 mW AC solar farm, two (2) houses, three (3) barns, for so long as the solar project is in operation; and,
- iv. a written conservation easement, consistent with the above referenced site plan and allowing for the approval of accessory farm-related structures, running to the Town which shall be filed together with the site plan.

(b) All Town permits and approvals customarily required by the Town, including, but not limited to, a building permit, must be obtained no later than 45 days after execution of this Agreement; provided, however, if the Parties are in good faith and the exercise of reasonable diligence and expedience pursuing issuance of such permits and approvals any Party shall have the option to extend such period by an additional 30 days by providing written notice to the other Parties prior to the expiration of the initial 45-day period. The Town's approval of the building permit will be subject to (i) confirmation by the Town Planner of all standard items on preliminary plan checklist; (ii) confirmation by the Town Planner of all standard items on final plan checklist; (iii) confirmation of all standard items on building permit routing sheet; (iv) all requirements set forth in the former solar Zoning Ordinance in effect at time of the submission of the original application, namely Article XXII of the Town of Coventry Zoning Ordinances regarding Special Regulations – Solar Power Generators effective as of July 24, 2017; (v) Green's securing all Rhode Island Department of

Environmental Management (“RIDEM”) permits required by RIDEM for the intended solar development; (vi) the Town Engineer’s review of Green’s stormwater & drainage report and (vii) confirmation of compliance with all applicable provisions of the Coventry subdivision plans and zoning ordinances.

- (c) Upon formal approval of this Agreement by vote of the Town Council and due execution by and delivery to all parties of this Agreement, the Green Entities and the Town will enter into a Tax Stabilization Agreement pursuant to R.I. Gen. Laws § 44-3-9 for 20 years at \$5/kW in the form attached hereto as **Exhibit B**;
- (d) Upon formal approval of this Agreement by vote of the Town Council and due execution by and delivery to all parties of this Agreement, the Green Entities shall install three (3) water cisterns for use by the Town’s Fire Department totaling 23,000 gallons (10,000, 10,000 and 3,000) at a time mutually agreeable to the Town and the Green Entities, but in no event later than December 31, 2020 unless delays are caused by the Town or by weather;
- (e) After the issuance of the building permit described in 2(b), with no appeals or satisfactory resolution of the appeals as described above, the Green Entities shall continue to cooperate, in good faith, with the Town on an ongoing basis to incorporate buffers for view mitigation for abutters;
- (f) Upon issuance of the building permit described in 2(b), with no appeals or satisfactory resolution of the appeals as described above, the Green Entities’ shadow flicker module relative to the properties recorded in the Tax Assessor’s office as Plat 304 (Lot 11), Plat 304 (Lot 2), Plat 304 (Lot 3) and Plat 310 (Lot 18) (the “Shadow Flicker Properties”) shall be reactivated (if not already activated), and thereafter the Green Entities shall provide a 10-day notice to the Town before turning off the module, which shall only be done for repairs and maintenance in the ordinary course. Epsilon Associates, Inc., a Massachusetts corporation with an office at 3 Mill & Main Place, Suite 250, Maynard, MA 01754 or if Epsilon Associates, Inc. is unavailable or unable another similar third party engineering firm to be chosen by the Town, (together “Epsilon”) will be given access to the data stored by the module in a form and frequency as required by Epsilon Associates at its reasonable discretion. Epsilon will use this data to monitor compliance with the Green Entities’ Special Use Permits for the respective turbines. If Epsilon reports non-compliance with the Special Use Permits for the Shadow Flicker Properties, which Special Use Permits (for purposes of this Agreement) the Parties agree limit aggregate flicker on the Shadow Flicker Properties to 30 hours per annum, the Town shall provide the Green Entities 10 days’ notice to cure the non-compliance, along with copies of the reasonable supporting evidence related thereto on which Epsilon has relied in determining the non-compliance. If the Green Entities do not cure, the Town shall be entitled, absent manifest error, to immediate injunctive relief in the Rhode Island Superior Court and, in such an event, the prevailing party shall be entitled to reasonable attorneys’ fees;
- (g) reserved; and



(h) The Green Entities and the Town shall issue a mutually agreeable, positive press release in the form attached hereto as **Exhibit C**.

3. **Release by the Town.** Effective upon the execution of the Agreement, the Town, for itself, forever fully and completely releases and discharges Green, Wind, M. DePasquale, J. DePasquale, Capwell, WED Two, WED Five, WED Six, WED Seven, and 394 Carr's, their current and former parents and subsidiaries, predecessors, successors (including any trustee or debtor-in-possession), assigns, affiliates, attorneys, insurers, reinsurers, officers, directors, members, managers, principals, shareholders, owners, agents, consultants, and employees, of and from any and all actions, suits, claims, duties, causes of action, demands, obligations, liabilities, rights, damages (including punitive or exemplary damages), or liability of any nature whatsoever, of any kind, whether known or unknown, asserted or unasserted, whether at law or in equity, under any statute or regulation, which it now has or ever had related to the Green Lawsuits.

4. **Release by the Green Entities.** Effective upon the execution of the Agreement, Green, Wind, M. DePasquale, J. DePasquale, Capwell, WED Two, WED Five, WED Six, WED Seven, and 394 Carr's, for themselves and their current and former parents and subsidiaries, predecessors, successors (including any trustee or debtor-in-possession), assigns, affiliates, attorneys, insurers, reinsurers, officers, directors, members, managers, principals, shareholders, owners, agents, consultants, and employees hereby now and forever fully and completely release and discharge the Town and Wagner of and from any and all actions, suits, claims, duties, causes of action, demands, obligations, liabilities, rights, damages (including punitive or exemplary damages), or liability of any nature whatsoever, of any kind, whether known or unknown, asserted or unasserted, whether at law or in equity, under any statute or regulation, which they now have, or ever had related to the Green Lawsuits.

5. **Mutual Cross-Covenants Not to Sue.** Effective upon the execution of the Agreement, the Parties for themselves, and for their predecessors and successors (including any trustee or debtor-in-possession) covenant not to sue, assert or otherwise participate as a litigant or join in any claim, lawsuit or other form of legal proceeding against any other Party, their respective current or former parents and subsidiaries, predecessors, successors (including any trustee or debtor-in-possession), assigns, affiliates, attorneys, insurers, reinsurers, officers, directors, members, managers, principals, shareholders, owners, agents and employees related to the Green Lawsuits except with respect to the obligations created by this Agreement. Effective upon the execution of the Agreement, Green shall file (or cause to be filed) the Stipulations of Dismissal in the Green Lawsuits which Stipulations are attached hereto as **Exhibits D-1 through D-7**.

6. **Claims Between Green Entities and Brian Wagner.** All claims between the Green Entities and Brian Wagner shall be resolved through a mutual release which shall include a covenant not to sue and a covenant not to encourage others to sue or be sued, which mutual release is attached hereto as **Exhibit E**.

7. **Mutual Non-Disparagement.** The Parties agree that they shall use their best efforts to cause themselves and their respective officers and employees to refrain from making or publishing any statement critical of any Party regarding any claims or disputes related to the Lawsuits.

8. **No Admission of Liability.** The Parties understand and acknowledge that this Agreement constitutes a compromise and settlement of disputed claims in the Green Lawsuits. No action taken by the Parties shall be deemed or construed to be: (a) an admission of the truth or falsity of any claims heretofore made in the Green Lawsuits or (b) an acknowledgement or admission by either party of any fault or liability whatsoever to the other party or to any third party.

9. **Authority.** The Parties warrant and represent to each other that the undersigning representatives have full and complete authority to execute this Agreement and bind them to the terms hereof, that they have taken all necessary actions to duly approve the making and performance of this Agreement, and that no further corporate or other approval is necessary.

10. **Representation of Counsel.** The Parties hereby agree that they have had the advice of counsel of their choosing in negotiation and preparation of this Agreement, and they have read the Agreement and have had this Agreement fully explained by such counsel and are fully aware of its contents and legal effect.

11. **Other Assurances.** Each Party hereto shall provide such further and other written assurances necessary to effectuate the terms and intent hereof. In the event that any Party seeks a court order determining that this Agreement was made at arms-length and in good faith, the Parties, to the fullest extent possible, shall cooperate with and assist each other in obtaining such a determination.

12. **Severability.** Any provision of this Agreement held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Agreement and the effect thereof shall be confined to the provision held unenforceable. The Parties expressly agree that the terms and provisions of this Agreement are contractual in nature and not merely recitals.

13. **No Waiver.** The provisions of this Agreement may not be changed, discharged, terminated, altered or waived orally, but only by an instrument in writing signed by the Parties hereto. The failure by any Party to enforce its rights under this Agreement on any occasion shall not operate as or be deemed to be a waiver of any future enforcement or exercise of such rights.

14. **Construction of Agreement.** No provision of this Agreement shall be construed against or interpreted to the disadvantage of any Party by any court or other governmental or judicial authority by reason of such Party's having or being deemed to have drafted, prepared or imposed such provision.

15. **Entire Agreement.** This Agreement shall constitute the entire agreement among the Parties with respect to the subject of this Agreement and shall supersede and replace any previous agreements and understandings between the Parties, whether written or oral, with respect to the subject matter of this Agreement.

16. **Enforcement.** Notwithstanding any of the following releases contained in this Agreement, nothing in this Agreement is intended to prevent, waive or release any Party to this Agreement from seeking enforcement of any of the terms, conditions or other provisions of this Agreement. If either Party commenced any action or proceeding against the other Party to enforce or interpret this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party the actual costs, interest, expenses and attorneys' fees (including all related costs and expenses), incurred by such prevailing party in connection with such action or proceeding and in connection with obtaining and enforcing any judgment or order thereby obtained.

17. **Governing Law and Forum Selection.** This Agreement is to be governed and construed in accordance with the laws of the State of Rhode Island, applied without regard to its law applicable to choice of law. The Parties agree that the state and federal courts in and for the State of Rhode Island shall have exclusive jurisdiction over all disputes arising between the Parties in relation to this Agreement including, without limitation, proceedings to enforce the terms hereof and disputes relating in any way of the Parties' obligations set forth herein, and the Parties hereby submit to the personal jurisdiction of such courts for all such purposes.

18. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same Agreement.

19. **Taxation of Wind Turbines.** The Town agrees that on a prospective basis it will tax all wind turbines located in the Town of Coventry using the same methodology and at the same rates, whether turbines are owned by any one or more of the Green entities, by the Town of West Warwick, by the Narragansett Bay Commission, or by others. This section is not intended to have any effect on any pending litigation challenging the Town's assessment of wind turbines.

20. **Notices.** Any notices required under this Agreement shall be sent by overnight delivery, and any additional methods reasonably designated in writing by a Party (including electronic mail or facsimile). Unless another person is designated in writing for receipt of notices hereunder, notices to the respective Parties shall be sent to the following persons:

For the Green Entities:

Mark DePasquale
2000 Chapel View Boulevard, Suite 500



Cranston, Rhode Island 02920

With a Copy to:

John O. Mancini, Esq.
Mancini Carter, PC
56 Pine Street, 3rd Floor
Providence, RI 02903

For M. DePasquale & J. DePasquale:

Mark DePasquale
2000 Chapel View Boulevard, Suite 500
Cranston, Rhode Island 02920

With a Copy to:

John O. Mancini, Esq.
Mancini Carter, PC
56 Pine Street, 3rd Floor
Providence, RI 02903

For Diane A. Capwell:

Diane Capwell
5555 Flat River Road
Coventry, Rhode Island 02827

With a Copy to:

John O. Mancini, Esq.
Mancini Carter, PC
56 Pine Street, 3rd Floor
Providence, RI 02903

For Brian Wagner:

Brian Wagner
6 North Hillview Drive
Narragansett, Rhode Island 02882

With a Copy to:

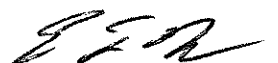
Stephen J. MacGillivray
Pierce Atwood LLP
One Financial Plaza, Floor 26
Providence, Rhode Island 02903

For the Town of Coventry:

Town Manager
1670 Flat River Road
Coventry, Rhode Island 02816

With a Copy to:

Stephen J. MacGillivray
Pierce Atwood LLP
One Financial Plaza, Floor 26
Providence, Rhode Island 02903



IN WITNESS WHEREOF, the Parties hereto have executed this Agreement of the day and year first above written.

GREEN DEVELOPMENT, LLC

By: 

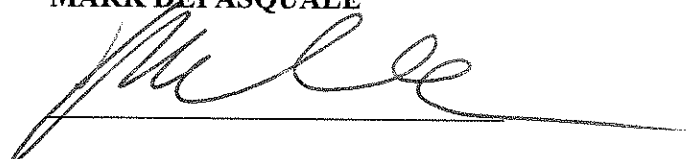
Mark DePasquale, CEO

WIND ENERGY DEVELOPMENT, LLC

By: 

Mark DePasquale, CEO

MARK DEPASQUALE



JUNE DEPASQUALE



DIANE A. CAPWELL




WED COVENTRY TWO, LLC


By: 

Mark DePasquale, Authorized Signatory

WED COVENTRY FIVE, LLC

By: 
Mark DePasquale, Authorized Signatory


WED COVENTRY SIX, LLC

By: 
Mark DePasquale, Authorized Signatory

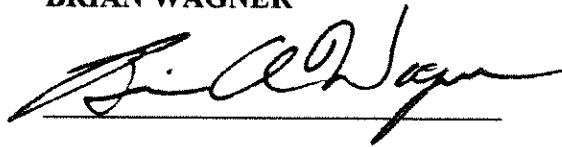
WED COVENTRY SEVEN, LLC

By: 
Mark DePasquale, Authorized Signatory

394 CARR'S TRAIL REALTY, LLC

By: 
Mark DePasquale, Manager

BRIAN WAGNER



TOWN OF COVENTRY


Edward Warzycha, Town Manager

