

## **OPTION AND SOLAR LEASE AGREEMENT**

THIS **OPTION AND SOLAR LEASE AGREEMENT** (“**Agreement**”) is made and entered into as of this 16<sup>th</sup> day of November, 2021 (the “**Effective Date**”), by and between the **Town of New Paltz**, a municipality of the State of New York (“**Town**”) and SL New Paltz Solar I, LLC (“**Lessee**”). Town and Lessee are sometimes hereinafter referred to individually as a “**Party**” and collectively as the “**Parties**.”

**WHEREAS**, Town owns and occupies the land located at 10 – 100 Clearwater Road in New Paltz, New York described in Exhibit A attached hereto (the “**Premises**”) and desires to lease a portion of the Premises (the “**Lease Area**”, as further described herein) to Lessee, effective upon Lessee’s election hereunder to lease the Lease Area;

**WHEREAS**, the Premises is the site of the Landfill, which is the subject of a closure plan approved by the New York State Department of Environmental Conservation; and

**WHEREAS**, the Town desires that Lessee construct, install, own, operate, repair, maintain and remove the System, to be located at the Premises, and, upon exercising its option to lease the Lease Area, Lessee will construct, install, own, operate, repair, maintain and remove the System and lease the Lease Area and Easements from the Town, all in accordance with the terms and conditions set forth herein.

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

1. Each of the following documents shall be deemed part of this Agreement and are incorporated herein by reference as though set forth herein in their entirety:

Annex 1, Terms and Conditions  
Exhibit A, Premises and Legal Description  
Exhibit B, Lease Area Description & Design Layout  
Exhibit C, Description of System  
Exhibit D, Form of Non-Disturbance Agreement  
Exhibit E, Lease Term Rent Assumptions & Adjustment  
Exhibit F, Additional Terms and Conditions.

2. This Agreement constitutes the entire agreement and understanding between Lessee and the Town with respect to the subject matter hereof and supersedes all prior agreements, written or verbal, if any, between them relating to the subject matter hereof, which are hereafter of no further force or effect. The Terms and Conditions and Exhibits are individually and

collectively integral parts hereof and are made a part of this Agreement by reference. In the event of a conflict between the provisions of this Agreement and any Exhibit, the provisions of this Agreement shall prevail over the terms of the Exhibit and any Exhibit shall be corrected by the Parties accordingly.

3. This Agreement may only be amended, modified, or supplemented by an instrument in writing executed by duly authorized representatives of the Town and Lessee.
4. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York without reference to its principles or conflicts of laws.
5. The relationship between Lessee and the Town shall not be that of partners, agents, or joint ventures, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Lessee and the Town, in performing any of their obligations hereunder, shall be independent contractors and shall discharge their contractual obligations at their own risk. Neither Party has the right to create an obligation for the other Party.
6. This Agreement may be executed by facsimile or scanned signatures transmitted by electronic mail and/or in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same original.

*(Signatures appear on the following page.)*

## Signature Page

IN WITNESS WHEREOF, the respective duly authorized officers of the Parties have executed this Option and Solar Lease Agreement as an instrument under seal as of the Effective Date.

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

SL New Paltz Solar I, LLC

Print Name: William C Zachary

Print Title: Authorized Signatory

**Town of New Paltz, New York**

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

Print Name: Neil Bettez

Print Title: Supervisor, Town of New Paltz

## ANNEX 1 TERMS AND CONDITIONS

### ARTICLE 1 - DEFINED TERMS; RULES OF INTERPRETATION

**Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement, or as otherwise set forth below.

**“Agreement”** is defined as this Option and Solar Lease Agreement consisting of the Terms and Conditions and all Exhibits referenced herein and attached hereto, collectively, this **“Agreement”**.

**“Applicable Legal Requirements”** means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen.

**“Bankrupt”** means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) causes or is subject to any event with respect to which, under the Applicable Legal Requirements of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vi) inclusive; or (viii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

**“Casualty Date”** shall have the meaning set forth in Article 11, Section 1.(b).

**“Commercial Operation Date”** means the tenth (10<sup>th</sup>) day after the Town’s receipt of a Completion Notice for the System from Lessee.

**“Completion Notice”** means a notice from the Lessee to the Town when the System is generating electric power and has been accepted for continuous commercial service by the LDC.

**“Decommissioning Surety”** means a deposit, execution or filing with the Town Clerk of cash, or an irrevocable Letter of Credit in a form acceptable to the Town in an amount sufficient to ensure the performance of Lessee’s System removal and restoration obligations as defined in the Decommission Plan (Article 6, Section 7).

**“Development Period”** shall be defined as the time between the Effective Date and the date of Lessee’s delivery of the Option Notice.

**“Dispute”** shall have the meaning set forth in Article 14, Section 1.

**“Easements”** mean the easements granted pursuant to Article 2, Section 3, and which area(s) may be later defined by the Parties.

**“Effective Date”** is defined as the date the Agreement is authorized and signed by all Parties.

**“Environmental Attributes”** means any offset, credit, benefit, reduction, rebate, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, RECs, Solar RECs, carbon credits, Green-e products, investment tax credits, production tax credits, forward capacity market credits or other credits earned by or in connection with, or otherwise attributable to, the System, or the electricity produced by the System, under or with respect to the Federal Clean Air Act (including, but not limited to, Title IV of the Clean Air Act Amendments of 1990), any state or federal renewable portfolio standard or renewable energy standard or other portfolio purchase mandate or requirement, including the renewable portfolio standard of the State of New York, the Regional Greenhouse Gas Initiative or any statute or regulation implementing the foregoing, any federal or other applicable act or regulation relating to carbon emissions or a cap or other limitation thereupon or any other state, federal or other Governmental Authority act, law or regulation that provides offsets, credits, benefits, reductions, allowances or incentives of any kind or nature related to electricity generation, generation capacity or emissions (or the lack or avoidance thereof).

**“Equipment Leasing Party”** means, if applicable, any Person to whom Lessee transferred the ownership interest in the System, subject to a leaseback of the System from such Person.

**“Events of Default”** means a Town Event of Default or a Lessee Event of Default, as

applicable.

**“Financing Party” or “Financing Parties”** means any and all Persons or successors in interest thereof, directly or indirectly, (i) lending money, (ii) extending credit, (iii) investing equity capital or (iv) providing or financing any System or other arrangement, including tax equity investments, for or in connection with any of the following: (a) the construction, term or permanent financing of the System; (b) working capital or other ordinary business requirements of the System (including the maintenance, repair, replacement or improvement of the System); (c) any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the System; or (d) the purchase of the System and the related rights. For avoidance of doubt, “Financing Party” shall include (x) an Equipment Leasing Party, if any, and any Person providing any of the foregoing categories of financing to Equipment Leasing Party with respect to the System and (b) any other person who provides debt or equity financing for the development, construction, ownership, operation or maintenance of the System (including, without limitation, any back-leverage financing provided to any direct or indirect owner of equity interests in Lessee or any tax equity investment in the System).

**“Force Majeure Event”** means an event, occurrence or circumstance, or combination thereof, beyond the reasonable control of a Party which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, and is not the result of the negligence of the Claiming Party, and which by the exercise of reasonable due diligence, the Claiming Party is nonetheless unable to overcome or avoid or cause to be avoided, including, but not limited to: (a) acts of God, terrorism, war, blockade, riot, civil disturbance or sabotage; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c) environmental and other contamination at or affecting the Premises, the Lease Area, the System or a Party’s obligations hereunder, except as may be caused by the negligence or affirmative act of the Claiming Party; (d) explosion, accident; (e) failure of a Governmental Authority to issue any permits properly applied for or to take any other action required to be taken by such Governmental Authority; (f) failure of an LDC to issue any permissions properly applied for and diligently pursued in good faith, or to take any other action required to be taken by such LDC; (g) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; and (h) epidemic, pandemic or governmental or judicial quarantine provided, that neither the lack of money nor changes in market conditions shall constitute a Force Majeure Event.

**“Governmental Authority”** means the United States of America, the State of New York, and any political or municipal subdivision thereof (including but not limited to the Town), and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator.

**“Hazardous Materials”** means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of “hazardous substances,”

“hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any Applicable Legal Requirements pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

“**Interest Rate**” means a fluctuating interest rate per annum equal to the sum of the lesser of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus two (2) percentage points, or (ii) the maximum rate permitted by Applicable Legal Requirements. In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Town and reasonably acceptable to Lessee. The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

“**Landfill**” means the landfill on the Premises, including, without limitation, any waste and other materials within such landfill, the landfill cap, the area below such membrane, any fill placed over the membrane and all structures, equipment, fixtures and improvements installed on the Premises by the Town and/or its agents and/or contractors, including without limitation the landfill cap, drainage, and gas venting structures and apparatus referenced in the closure plan with respect to such landfill. To avoid doubt, “Landfill” does not include the System.

“**Landfill Closure Plan**” means the closure plan required by the December 14, 1988 NYS DEC order of consent and approved by the NYS DEC, as same may be amended from time to time with the approval of the NYS DEC.

“**Landfill Conditions**” is defined in Article 2, Section 6.(c).

“**LDC**” means the regulated electric local distribution company that provides electric distribution service to the municipality in which Town is located, which as of the Effective Date is Central Hudson Gas and Electric Corporation.

“**LDC System**” means the electric distribution system operated and maintained by the LDC.

“**Lease Area**” means the portion of the Premises which the Town leases to Lessee hereunder, to allow the construction, installation, ownership, operation, repair,

maintenance and removal of the System, which area shall include the Easements, including the real property depicted in the plan attached as Exhibit B until the Lease Area is further defined as the final Lease Area, and that a survey or plot plan shall be an amendment to this Agreement as a new Exhibit B, and the Lease Area shall then mean the portion of the Premises defined by the survey.

**“Lease Commencement Date”** shall have the meaning as set forth in Article 2, Section 1(b).

**“Lease Term”** means the period commencing on the Lease Commencement Date and ending on the last day of the Term.

**“Lease Term Rent”** shall have the meaning as set forth in Article 4, Section 3 which the Town acknowledges constitutes fair market value rent payable in an arms-length transaction.

**“Lessee Indemnified Parties”** shall have the meaning set forth in Article 13, Section 2.

**“Lessee Property”** shall have the meaning set forth in Article 2, Section 7.

**“NDA”** means a non-disturbance agreement substantially in the form attached hereto as Exhibit D.

**“NYS DEC”** means the New York State Department of Environmental Conservation.

**“Option”** shall have the meaning as set forth in Article 2, Section 1.

**“Option Term”** shall mean the time between the Effective Date through the Lease Commencement Date

**“Option Fees”** shall have the meaning as set forth in Article 4, Section 2.

**“Option Notice”** shall have the meaning as set forth in Article 2, Section 1.

**“Permitted Repair Period”** shall have the meaning set forth in Article 11, Section 1.(c).

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

**“Premises”** has the meaning set forth in Exhibit A, including the Lease Area.

**“Project Manager Fee”** means a fee paid by the Lessee to the Town.

“**System**” means the solar electric generating facility to be installed in the Lease Area, including but not limited to the System Assets, which produces electricity, as more fully described on Exhibit C.

“**System Assets**” means each and all of the assets of which the System is comprised, including Lessee’s solar energy panels, mounting systems, carports, tracking devices, inverters, transformers, energy storage equipment, integrators and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the LDC delivery point, protective and associated equipment, improvements, metering devices, fencing and other tangible and intangible assets, including System electricity production and Environmental Attributes, and permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

“**Term**” shall have the meaning set forth in Article 3, Section 1.

“**Termination Date**” means the last day of the Term.

## ARTICLE 2 – OPTION; LEASE; SYSTEM

### 1. Grant and Exercise of Option.

(a) The Town hereby grants to Lessee an exclusive option to lease the Lease Area (the “**Option**”), which Option shall be in effect during the Development Period for so long as the Option Fees (as defined herein) are paid to the Town by Lessee as required herein and the Development Period does not extend beyond two (2) years past the Effective Date. Lessee may, at its sole option, terminate this Agreement at any time during the Development Period. Any payments, including the Option Fees, made to the Town before this Agreement is terminated shall be the Town’s property and shall not be refunded. The Town may terminate this Agreement at any time during the Development Period if Lessee fails to pay the Option Fees as required hereunder and the Town has provided written notice of such failure to Lessee and provided thirty (30) days to cure such failure. Town or Lessee may terminate this Agreement at any time after the Development Period, only as expressly provided herein. Any payments, including the Option Fees, made to the Town before this Agreement is terminated shall be the Town’s property and shall not be refunded.

(b) Lessee may exercise its Option by giving written notice of such exercise to the Town (the “**Option Notice**”) at any time during the Development Period. The Town and Lessee agree that as of the date of exercise of the Option Notice, the lease granted hereunder in accordance with Article 2, Section 2 below shall commence (the “**Lease Commencement Date**”) and the Development Period shall automatically terminate. If Lessee does not exercise the Option, then this Agreement shall automatically terminate at the end of the Development Period, and this Agreement shall be of no further force or

effect and all rights, duties and obligations of the Town and Lessee under this Agreement shall terminate unless and to the extent such terms expressly survive termination of this Agreement.

**2. Lease.**

If Lessee exercises the Option set forth in Article 2, Section 1 above, then effective upon the Lease Commencement Date, the Town, for and in consideration of the covenants and agreements on the part of Lessee contained in this Agreement, does hereby lease to Lessee, and Lessee does hereby lease and take from the Town, upon and subject to the conditions herein expressed, the Lease Area for the sole and exclusive use of constructing, installing, owning, operating, repairing, maintaining and removing the System. Lessee's use of the Lease Area is subject to compliance with all Applicable Legal Requirements. Lessee shall have exclusive use and possession of the Lease Area during the Term.

**3. Easements.**

The Town hereby grants the following easements ("***Easements***") to Lessee:

(a) a non-exclusive easement for access to the Lease Area across or through the external portion of the Premises and any surrounding or adjacent area owned or leased by the Town which is necessary in such location and of such dimensions as determined by the Lessee in consultation with the Town and the regulated electric local distribution company (LDC) which as of the Effective Date is Central Hudson Gas and Electric Corporation and approved by the Town, which approval shall not be unreasonably withheld, conditioned or delayed by the Town in its reasonable discretion, to gain access to the System;

(b) a temporary exclusive use right of an area identified as a Temporary Easement on Exhibit B on the external portion of the Premises (outside of the Lease Area) to be used as a laydown or similar area in connection for System installation, construction, operation, repair, maintenance and removal;

(c) an exclusive easement for the installation, operation and maintenance of electric lines necessary to interconnect the System to the LDC's electric distribution System in such location and of such dimensions as determined by the Lessee in consultation with the Town and the regulated electric local distribution company (LDC) which as of the Effective Date is Central Hudson Gas and Electric Corporation and approved by the Town, which approval shall not be unreasonably withheld, conditioned or delayed by the Town in its reasonable discretion, to gain access to the System;

**4. File Notice of Lease.** Parties agree that this Agreement shall not be recorded, but promptly hereafter the Town and Lessee shall work together to execute and record a

Memorandum of Lease describing the Lease Area and Easements reasonably acceptable to both Parties. Any subsequent amendments of this Agreement, including all easements subsequently entered into in accordance with Article 2 hereof, shall be reflected by filing with the County an appropriate Memorandum of Amendment to Lease. All recordation fees and expenses paid by the Town shall be reimbursed by Lessee.

**5. Town Representations and Warranties.** The Town represents and warrants to Lessee that:

(a) The Town has no knowledge of any violation of the Landfill Closure Plan with respect to the Premises and no event or condition has occurred, or is likely to occur, which, with the passage of time or giving of notice, would constitute such a violation.

(b) The Town has no knowledge of any violations of Applicable Legal Requirements with respect to the Premises or any event or condition having occurred which with the passage of time or giving of notice would constitute such a violation.

(c) The Town represents and warrants that it has good and marketable fee simple title to the Premises. There are no encumbrances or liens (including other tenancies) against the Lease Area. The Town shall immediately obtain and deliver to Lessee an NDA from any third party who has, or obtains during the Term, a lienhold or similar interest in the Lease Area, including any lender, and any holder of any easement, lease, license or right of way.

(d) The Town shall provide and maintain in good order and condition all roads, driveways, parking lots and walkways that are now and may be located on the grounds of the Premises that are necessary or appropriate for proper ingress and egress to and from, and use and occupancy of, the Lease Area.

(e) The Town will not cause, and will not permit its employees, invitees, agents or contractors to cause, the electrical system at the Lease Area to shut down, temporarily or otherwise, unless same is necessary as the result of an emergency.

(f) The Town will not, and will not permit its employees, invitees, agents or contractors to, conduct activities on, in or about the Lease Area that the Town knows or reasonably should know may damage, impair or otherwise adversely affect the System or its function. Further, the Town will not, and will not permit its employees, invitees, agents or contractors to conduct maintenance to the Lease Area, or to undertake other activities, that are reasonably likely to damage, impair or otherwise adversely affect the System or its function. The Town shall take all reasonable steps to limit access to the Lease to Lessee and Lessee's employees, invitees, agents and representatives.

(g) The execution and delivery by the Town of, and the performance of its obligations under, this Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene

any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on the Town, or any valid order of any court, municipal or regulatory agency or other body having authority to which the Town is subject. This Agreement constitutes a legal and valid obligation of the Town, enforceable against the Town.

(h) The Town acknowledges and agrees that the free and unobstructed flow of sunlight (“**Insolation**”) is essential to the value to Lessee of the leasehold interest granted hereunder, and is a material inducement to Lessee in entering into this Agreement. The Town shall not permit any interference with Insolation reaching the Lease Area. Without limiting the foregoing, the Town shall not construct or permit to be constructed any structure on the Premises that could adversely affect Insolation levels, permit the growth of foliage that could adversely affect Insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation. If the Town becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the Insolation to the Lease Area, the Town shall advise Lessee of such information and reasonably cooperate with Lessee in measures to preserve existing levels of Insolation at the Lease Area. Notwithstanding any other provision of this Agreement, the Parties agree that (i) Lessee would be irreparably harmed by a breach of the provisions of this clause (h), (ii) an award of monetary damages would be inadequate to remedy such a breach, and (iii) Lessee shall be entitled to seek equitable relief, including specific performance, to compel compliance with the provisions of this clause (h).

(i) Without limitation to any of the Town’s other representations, warranties and covenants set forth herein, as long as no Event of Default by Lessee has occurred or is continuing beyond any applicable cure period, the Town covenants that Lessee shall and may peacefully and quietly have, hold, occupy and enjoy the Lease Area and Easements for the entire Term, without hindrance, ejection or molestation by the Town or any party claiming under or through the Town.

## **6. Acceptance of Lease Area: Landfill Conditions.**

(a) Lessee accepts the Lease Area after reasonable examination thereof and knowledge of its present uses and non-uses. Except as expressly provided herein, the Town shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Lease Area or the Premises.

(b) Except as expressly provided herein, Lessee accepts the Lease Area in the condition or state in which it now is without any representation or warranty, express or implied in fact or by law, by the Town or any person purporting to represent the Town and without recourse against the Town, as to the title thereto, the nature, condition or usability thereof or the suitability of the Lease Area for the use or uses to which the Lease Area or the Premises or any part thereof may be put as authorized hereby; *provided, however*, notwithstanding anything herein to the contrary, in granting this Agreement, the Town does not (and covenants not to) seek to make Lessee liable for any past, present or future

contamination or pollution or breach of any Applicable Legal Requirement pertaining to the use, storage and disposal of Hazardous Materials, if any, located on or related to the Premises, including the Lease Area and the land beneath, unless brought to the Property by or on behalf of Lessee. Accordingly, the Town agrees to assume full responsibility, and hold Lessee harmless, for any liability or cleanup obligations for any contamination or pollution or breach of Applicable Legal Requirements pertaining to the use, storage and disposal of Hazardous Materials, related to the Premises, including the Lease Area, unless brought to the Premises by or on behalf of Lessee.

(c) Notwithstanding anything contained herein, neither Lessee nor any entity which enters into a sublease with Lessee with respect to all or any portion of the Premises, shall be liable for: (i) the Landfill; (ii) any conditions on the Premises arising from or related to acts, omissions or conditions occurring prior to the Effective Date; or (iii) any “release” of any Hazardous Materials on or from the Premises or the Landfill, unless (and then, only to the extent) caused by Lessee or any of its related entities, contractors, invitees or licensees during the Term ((i), (ii) and (iii), collectively, “**Landfill Conditions**”).

(d) The parties acknowledge that the Lease Area is part of the Landfill that the Town and the Ulster County Resource Recovery Agency (UCRRA) are required to monitor and/or maintain the Landfill within the Lease Area. The Town has entered into an agreement that authorizes the Landfill monitoring and maintenance responsibilities to UCRRA. Thus, as between the Parties, Lessee shall, at its sole cost and expense, maintain and operate the System in accordance with this Agreement without penetrating the cap of the Landfill. Lessee shall maintain the ground cover in the Lease Area, including regular mowing of vegetation consistent with the operation requirements of a photovoltaic system and Exhibit C of this Agreement. Town and UCRRA shall continue to maintain and operate the landfill and, notwithstanding anything in this Agreement to the contrary, be exclusively responsible and liable for all Landfill Conditions. Each Party shall have the right to enter the Premises to maintain and monitor the cap as needed, provided that they provide reasonable notice of their entrance.

## **7. Ownership of the System.**

(a) Title to System. Subject to the rights expressly provided to the Town pursuant to this Agreement, the System and all alterations, additions, improvements or installations made thereto by Lessee and all Lessee property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Lessee (“**Lessee Property**”). In no event shall any Lessee Property be deemed a fixture, nor shall the Town, nor anyone claiming by, through or under the Town (including but not limited to any present or future mortgagee of the Premises) have any rights in or to any Lessee Property at any time except as expressly provided herein. Except as expressly provided herein, the Town shall have no ownership or other interest in the System, System Assets or Lessee Property or other equipment or personal property of Lessee installed on the Premises, and Lessee may remove all or any portion of the System, System Assets or Lessee Property at any time and from time to time as further provided

in and subject to, this Agreement. Without limiting the generality of the foregoing, Town hereby waives any statutory or common law lien that it might otherwise have in or to the System, other System Assets and Lessee Property or any portion thereof, but such waiver shall not extend to claims by the Town in the System Assets based upon a default by Lessee hereunder to the extent this Agreement expressly grants the Town certain rights in respect thereof.

(b) Security Interests in System. The Town acknowledges and agrees that Lessee may grant or cause to be granted to a Financing Party a security interest in the System and in Lessee's rights under the Agreement, and Town expressly disclaims and waives any rights in the System at law or in equity pursuant to this Agreement. Any security interest shall be subordinate to the interest of the Town in the Lease Area and subject to the terms and conditions of this Agreement; *provided, however* the Town shall execute and deliver, and cause any holder of an interest in the Lease Area (including any lenders and any holder of any easement, lease, license or right of way) senior to that of Lessee to execute and deliver, an NDA to Lessee, any Financing Party and/or any sublessee.

(c) No Expenditures. Lessee and the Town acknowledge and agree that the Town shall not be required, except as expressly provided herein, to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Agreement or the ownership, construction, operation, maintenance, repair, or removal of the System.

(d) No Additional Use. Except with the prior express written consent of the Town, Lessee shall not use the Lease Area for any use other than the construction, installation, ownership, operation, repair, maintenance and removal of the System.

### ARTICLE 3 – TERM

1. Term. The term of this Agreement ("**Term**") shall commence on the Effective Date and shall remain in effect until the twenty-fifth (25<sup>th</sup>) anniversary of the Commercial Operation Date, unless terminated earlier in accordance with this Agreement *provided*, that the Parties shall have the option to extend the initial Term for up to four (4) additional and successive periods of five (5) years, beginning on the day immediately following the last day of the Term, by mutually agreeing to such extension in writing as an amendment to this Agreement no less than ninety (90) days prior to the end of the Term, and without the requirement of any further action on the part of either the Town or Lessee.
2. Termination. If Lessee delivers written notice prior to the first (1<sup>st</sup>) anniversary of the Effective Date, then Lessee shall have the option, in its sole discretion, to terminate the Agreement at any time before the first (1<sup>st</sup>) anniversary of the Effective Date without any further liability or payment obligations to the Town. Further, if Lessee delivers written notice prior to the second (2<sup>nd</sup>) anniversary of the Effective Date, then Lessee shall have the option, in its sole discretion, to terminate the Agreement at any time before the second

(2nd) anniversary of the Effective Date without any further liability or payment obligations to the Town as long as the Lessee has paid the Town an amount equal to at least \$10,000 of the Options Fees (as defined in Article 4).

#### ARTICLE 4 – FEES AND RENT

1. **The Project Manager Fee Payment.** Lessee shall pay the Project Manager Fee of \$50,000 in accordance with the following payment schedule:
  - a. **\$15,000** shall be paid upon the occurrence of the Effective Date simultaneously with the execution and delivery of this Agreement.
  - b. **\$35,000** shall be paid upon the occurrence of the Lease Commencement Date.

The Town shall utilize the Project Manager Fee to engage a Project Manager to represent the interests of the Town, in its sole discretion.

2. **The Option Fees.** The Option fees below (individually and collectively, the “Option Fees”) shall be paid by Lessee to the Town as follows:
  - a. \$10,000 upon the Effective Date.
  - b. \$5,000 upon the 360<sup>th</sup> day beyond the Effective Date
  - c. \$3,000 upon the 540<sup>th</sup> day beyond the Effective Date.
  - d. \$2,000 upon the 720<sup>th</sup> day beyond the Effective Date.

Total potential Option Fees: \$20,000.

3. **The Lease Term Rent.** The required annual lease payment from Lessee to the Town during each year of the Agreement Term after the Lease Commencement Date is the amount provided for in Exhibit E each year (“**Lease Term Rent**”). Lessee shall pay the Lease Term Rent in accordance with the terms of this Agreement.
  - a) The first year’s Lease Term Rent shall be payable no later than ten days after the Lease Commencement Date.
  - b) Each subsequent Lease Term Rent shall be no later than ten days after each anniversary of the Lease Commencement Date.
  - c) The Lease Term Rent shall be adjusted annually as provided on Exhibit E.
4. **Late Payment.** If any payment of Project Manager Fee, Option Fees, Lease Term Rent and those items listed in Exhibit F are not paid by Lessee to the Town within fifteen (15) calendar days of the date on which the payment is due under this Agreement, a penalty of 5% of the unpaid amount shall be added to the unpaid amount, and such new amount shall be payable to the Town within the next thirty (30) calendar days

following which the payment is due under this Agreement. Thereafter, a penalty of 1.5% upon the unpaid amount, together with penalties accrued thereon, shall be added to such unpaid amount for each successive thirty-day period, or portion thereof, until such time as such unpaid amount, together with all the penalties accrued thereon, is paid. Any and all payments received on account of delinquent accounts shall be applied first to the oldest outstanding gross bill, including any accumulated late fee.

## ARTICLE 5– DUTIES

### 1. Maintenance; Repairs; Non Interference.

(a) Lessee shall, at its sole cost and expense, and in its commercially reasonable discretion, (i) take good care of the System, conduct all required maintenance of the System and make all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the System in safe repair and condition in accordance with prudent industry practice, free and clear of any hazards or dangerous conditions and (ii) mow the grass and otherwise maintain all vegetation (as applicable) within the Lease Area, and otherwise comply with all standards and conditions required under the Legal Obligations, applicable to the operation and maintenance of the System including without limitation standards recommended by the NYS DEC.

(b) Except as expressly stated in this Agreement, the Town will continue to have responsibility for all obligations with respect to the Landfill for which the parties acknowledge that the Lease Area is part of the Landfill that the Town and the Ulster County Resource Recovery Agency (UCRRA) are required to monitor and/or maintain and that the Town has entered into an agreement that authorizes the Landfill monitoring and maintenance responsibilities to UCRRA, including maintaining the Landfill and making all repairs and replacements to the Landfill, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, except to the extent of any required as a result of any act, or failure to act, by Lessee or any of its related entities, contractors, invitees or licensees, and except any required in connection with Lessee's activities pursuant to and in accordance with this Agreement.

(c) Nothing in this Agreement shall limit the Town's ability and obligation, at its sole cost and expense, to maintain the Premises in a reasonable manner consistent with the Town's current and past practices and the terms of this Agreement.

(d) To the extent required to comply with Applicable Legal Requirements, the Town may construct, reconstruct, modify or make alterations to the Premises; *provided, however,* that in no event shall such activities shade the System or otherwise materially interfere with the operation of the System or Lessee's rights hereunder. Any such material interference with the operation of the System or Lessee's rights hereunder shall constitute a Town Event of Default and shall be governed by Article 10, Section 3.

(e) Lessee shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it, including without limitation, gas, electricity, water, steam, telephone service, trash collection and connection charges. The Town shall have no duty or liability to Lessee with respect to the maintenance, repair, upgrade, or replacement of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by the Town or any third party. In the event that Lessee desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by the Town, Lessee may do so at Lessee's expense subject to the prior written approval of the Town, which shall not be unreasonably withheld.

## **2. Compliance with Laws; Professional Standards.**

(a) Lessee, at Lessee's expense, shall diligently and fully comply with all Applicable Legal Requirements governing its use and occupancy of the Lease Area and the construction, maintenance, repair, and removal of the System. In addition, Lessee shall ensure that the System is operated and maintained in a professional manner by appropriately trained and qualified individuals.

(b) The Town with the services of UCRRA subject to any Town expense, shall diligently and fully comply with all Applicable Legal Requirements governing the Landfill, including the closure of the Landfill and the maintenance, repair and upkeep of the Landfill, except to the extent of conditions caused wholly or partly by any act, or failure to act, by Lessee of any of its related entities, contractors, invitees, or licensees. In addition, the Town with the services of UCRRA shall ensure that such obligations are performed in a professional manner by appropriately trained and qualified individuals.

## **ARTICLE 6 - CONSTRUCTION AND OPERATION OF PERMITTED USE**

- 1. General Description.** Except as otherwise specified herein, the System shall conform to Exhibit B of this Agreement. Any material modification or deviation from the design as depicted in Exhibit B shall require the subsequent consent of the Town, which consent will not be unreasonably withheld, conditioned or delayed.
- 2. Governmental Approval.** Except as otherwise specified herein, or otherwise obtained prior to the Effective Date, Lessee will obtain at its sole cost all approvals and permits required under the Applicable Legal Requirements for Lessee's use of the Lease Area for the System from any Governmental Authority having jurisdiction including (as applicable), but not limited to, the Town of New Paltz Planning Board, the County of Ulster Resource Recovery Agency, the State of New York Department of Environmental Conservation (including but not limited to the State Environmental Quality Review Act and its amendments) and the Town of New Paltz Building Department. Lessee will promptly

inform the Town of all significant developments relating to the issuance of such approvals or permits. The Town will reasonably cooperate with Lessee in procuring such approvals, except as expressly set forth herein this Agreement does not impose an affirmative obligation on the Town to issue or procure any approval or to engage in any action or inaction inconsistent with the proper exercise of the Town's regulatory authority). If any changes in such plans and/or specifications are required by any Governmental Authority, then Lessee shall submit such changes, if any, to the Town for its approval, and such approval shall not be unreasonably conditioned, withheld or delayed. Lessee will be required to keep any such approvals current and in full effect during the Lease Term.

**3. Completion Requirements.** Lessee may perform construction at the Premises between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, unless otherwise limited by local ordinance and shall do so in reasonable coordination with the Town and in a manner which limits inconvenience to and interference with the Town and the Town's invitees' and employees' use of the Premises to the extent commercially practical. Lessee shall grant the Town and its authorized representative's access to and the right, but not the obligation, to observe installation and any significant repairs to or replacement of the System at all times provided that neither the Town nor its authorized representatives shall interfere with the installation or repair work or use or move any Lessee equipment or the System without written authorization from Lessee.

**4. Access to and Use of the Premises.**

(a) Lessee and its sub-contractors, agents, consultants, and representatives shall have exclusive access at all reasonable times (including under emergency conditions) to the Lease Area for the purpose of construction, operation, inspection, maintenance, repair and removal of the System, and to any documents, materials and records of the Town relating to the Premises that Lessee reasonably requests in conjunction with these activities. During any such activities, Lessee, and its sub-contractors, agents, consultants and representatives shall comply with the Town's reasonable safety and security procedures (as may be promulgated from time to time), and Lessee and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with the Town's other activities.

(b) Prior to the removal of the System, Lessee shall have the right to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in the Agreement, including, without limiting the generality of the foregoing, the right to (i) design, construct, install, own, maintain, replace, add to, repair, operate and remove the System, each in accordance with the Permits and Applicable Legal Requirement and (ii) use any and all appropriate means of restricting access to the System and Lease Area, including without limitation, the construction of a fence or other encumbrances existing on the Lease Area determined to be necessary by Lessee in its sole discretion and in accordance to the Permits and Applicable Legal Requirement. Except as may otherwise be specifically agreed upon by

the Parties or as expressly set forth herein, Lessee shall be responsible for all costs of such activities.

5. **As-built Plans.** Within ninety (90) days following the issuance of the Completion Notice, Lessee shall prepare and deliver to the Town detailed as-built plans accurately depicting the System including, without limitation, all wiring, lines, conduits, piping and other structures or equipment, certified to the Town. Lessee shall also deliver to the Town a certification from its engineer, who shall be duly licensed in the State of New York, that the System has been constructed in accordance with all approved plans and specifications.
6. **Operations.** Lessee shall submit to the Town annually a written summary of operations which shall include any material modifications and a summary of the amount of production for the preceding twelve (12) months.
7. **Removal of the System; Decommissioning.**

(a) Commencing on the Termination Date, Lessee shall, at its sole cost and expense, remove from the Premises all of the tangible property comprising the System, including but not limited to all structures built by the Lessee, any fencing and/or barriers to secure the System and any System mounting and other support structures. Lessee shall return the Premises "as is" with all vegetation, trails or roadways, utilities and site conditions existing as of the expiration of the Lease Term and shall have no obligation to restore the Premises to their condition prior to the Effective Date with the exception of a seed planting schedule that has been prepared by a forestry professional and approved by the Town prior to the Option Notice. Lessee shall repair any damage it causes in connection with such removal not related to ordinary use and wear at its sole cost and expense.

(b) If Lessee fails to (i) remove the System within 360 days of the expiration of the date that the Agreement terminates or (ii) commence substantial efforts to remove the System within 180 days of the expiration of the date that the Agreement terminates, the Town shall have the right, at its option, to possession, use of and ownership of the System including the right, without limit, to remove and to sell same, and restore the Lease Area to its original condition (other than ordinary wear and tear) and Lessee shall reimburse the Town for reasonable out-of-pocket costs and expenses incurred by the Town in removing, storing and selling the System and in restoring the Lease Area, net of any proceeds received in connection with the sale of the System. Alternatively, in the event of (b)(i) or (b)(ii), at the Town's discretion after due notice to Lessee and expiration of all applicable cure periods, the Town shall be entitled to demand and to receive the amounts secured by the Decommissioning Surety shall be entitled to maintain any action or proceeding for the collection of same.

(c) The Decommissioning Surety shall be posted by Lessee no later than the delivery of the Option Notice and shall remain in full force and effect until restoration of the Site as required by this Agreement.

(d) The Decommissioning Surety shall be in the amount of \$50,000 per megawatt of Size (capacity) as recognized as the greater of Item 1 or Item 2 of Exhibit C. Such Decommissioning Security amount shall be updated each annual anniversary of the Effective Date only if additional megawatts of Size have been added to the System during the previous year in accordance with this Agreement.

8. **Survival.** The provisions of this Article 6 shall survive the expiration or termination of the Agreement.

## ARTICLE 7 – LIENS

1. **No Liens.** Lessee shall not create, or suffer to be created or cause to remain, and shall promptly discharge, any mechanic's, laborer's or materialman's lien, or any other lien upon the Premises and Lessee will not suffer any other matter or thing arising out of Lessee's use and occupancy of the Premises whereby the estate, rights and interests of the Town in the Premises or any part thereof might be impaired, except in accordance with and subject to the provisions of this Agreement.
2. **Discharge.** If any mechanic's, laborer's or materialman's or other lien shall at any time be filed against the Premises, Lessee, within sixty (60) days after notice to Lessee of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Lessee shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the Town may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by the Town and costs reasonably incurred by the Town in connection therewith, together with interest thereon at the Interest Rate from the respective dates of the Town's making of the payment of the cost and expenses, shall be paid by Lessee to the Town within ten (10) Business Days of the Town's invoice therefor.
3. **Town's Obligations.** The Town shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the System or any interest therein.

## ARTICLE 8 - RIGHT TO INSPECT AND ENTER

1. **Inspection and Entry.** During the course of construction and completion of the System and any substantial alteration thereto, Lessee shall maintain all plans, shop drawings, and specifications relating to such construction which the Town, whose agents or contractors may examine at reasonable times upon reasonable prior notice for the

purpose of determining whether the work conforms to the agreements contained or referenced in this Agreement. The Town may, upon reasonable prior notice to Lessee by telephone or otherwise, enter upon the Lease Area and inspect the System for the purpose of ascertaining its condition or whether Lessee is observing and performing the obligations assumed by it under this Agreement, all without hindrance or molestation from Lessee. Lessee shall obtain the Town's prior written approval of any proposed substantial alteration, other than alterations required by any Applicable Legal Requirement, and such approval shall not be unreasonably withheld, conditioned or delayed.

2. **Notice of Damage.** The Town shall promptly notify Lessee of any matter it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

## ARTICLE 9 - ASSIGNMENT AND SUBCONTRACTING

1. **Successors and Assigns; Subcontracting.**

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns; provided, that Lessee in its discretion may elect to use such certified and licensed subcontractors as it may choose in performing any of its obligations hereunder and performance of any obligation of Lessee by any such subcontractor shall satisfy such obligation to the extent of such subcontractor's performance.

2. **Assignment by Town.** The Town shall not sell, transfer, assign, pledge or cause or permit to be assumed (together, "**Assign**"; and any such action, an "**Assignment**") this Agreement, in whole or in part, without the prior written consent of Lessee and its applicable Financing Parties.
3. **Assignment by Lessee.** Lessee may with the prior written notice to the Town in each instance assign this Agreement, in whole or in part. Any assignment shall be conditioned upon the assignee explicitly assuming in writing all of Lessee's obligations under this Agreement. Lessee shall deliver to the Town thirty (30) days' advance written notice of its intent to assign this Agreement. Lessee shall also have the right to enter into one or more subleases with respect to this Agreement and/or to assign any rights under this Agreement to any purchaser(s) of metering credits.
4. **Consent to Assignment for Financing or Leasing.** Lessee, in its sole discretion, may seek financing for the construction and/or ownership and maintenance of all or a portion of the System, whether by a sale- leaseback of all or a portion of the System from an Equipment Leasing Party or entering into any other arrangements with a Financing Party in the form of an equipment lease, finance lease, debt, equity, tax equity, back-leverage or other financing arrangement, in each case, as determined by Lessee in its sole discretion. Lessee may collaterally assign or assign fully in connection with any financing of the System (which may, in connection with such Assignment, permit the Financing

Party to further assign collaterally), its rights, and/or obligations hereunder for purposes of securing such financing or leasing arrangement. The Town hereby consents to any such Assignment, provided that:

(a) Such Assignment shall not create any lien or other encumbrance on the Premises other than Lessee's rights and obligations contemplated in this Agreement nor on any other real or personal property located on the Premises other than the System; and all provisions regarding the entry onto and use of the applicable Premises, including the Lease Area, shall remain in effect; and

(b) Notwithstanding any such Assignment to one or more Financing Parties or a designee thereof, Lessee shall not be released and discharged from and shall remain liable for any and all obligations to the Town arising or accruing hereunder prior to the date of such Assignment (and, in the case of a partial Assignment, for the obligations accruing after the date of such Assignment with respect to obligations accruing under the unassigned portion of the Agreement).

The Town agrees to sign, execute and deliver or cause to be delivered each such consent to assignment, legal opinion, instrument or other document as Lessee or its Financing Parties may reasonably request to satisfy the requirements of any Financing Party with respect to or in connection with any financing or leasing of the System. The Town also agrees, to the extent required by a Financing Party to provide Lessee and/or a Financing Party with such information about the Town or the Premises as Lessee, a Financing Party may reasonably request, provided that Lessee shall be responsible for any expense incurred by Town in connection therewith, and provided further that the Town shall not be required to disclose any information deemed confidential under any Applicable Legal Requirement.

Lessee shall reimburse the Town for all reasonable costs and expenses incurred in connection with the Town's obligations hereunder in connection with any such financing including, without limitation by reason of specification, reasonable attorney, engineer and other consultant fees and disbursements.

Nothing in the foregoing shall be deemed to require that the interests of the Town or of any other entity senior to those of the Financing Party shall be subject or subordinate to the interest of the Financing Party.

**5. Rights of Financing Parties.** Notwithstanding any contrary term of this Agreement:

(a) the Financing Party, as owner of the System, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Lessee, any and all rights and remedies of Lessee under this Agreement in accordance with the terms of this Agreement. The Financing Party shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the System;

(b) the Financing Party shall have the right, but not the obligation, to pay all sums due

under this Agreement and to perform any other act, duty or obligation required of Lessee thereunder or cause to be cured any default of Lessee hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Lessee under this Agreement or (unless the Financing Party has succeeded to Lessee's interests under this Agreement) to perform any act, duty or obligation of Lessee under this Agreement, but the Town hereby gives it the option to do so;

(c) upon the exercise of remedies, including any sale of the System by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Lessee to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to the Town of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement; and

(d) upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Lessee under the United States Bankruptcy Code, at the request of Financing Party made within ninety (90) days of such termination or rejection, the Town shall enter into a new agreement with Financing Party or its assignee having substantially the same terms and conditions as this Agreement.

## **6. Right to Cure.**

(a) Town will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Lessee default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously and diligently pursues curing of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(b) If the Financing Party or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Lessee's assets and shall, within the time periods described in this Agreement, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

## **ARTICLE 10 - DEFAULT AND REMEDIES**

### **1. Lessee Events of Default.** Lessee shall be in default of this Agreement (a "**Lessee Event**

**of Default")** if any of the following shall occur:

(a) Lessee fails to pay when due any sum of money becoming due to be paid to the Town by Lessee under this Agreement and such failure shall continue for a period of thirty (30) days after written notice that such payment was not made when due;

(b) Lessee fails to perform or observe any material term or condition of this Agreement, including any violation by Lessee of Applicable Legal Requirements and/or any negligent or wrongful actions by Lessee which cause damage to the membrane or other Landfill feature which violates the NYS DEC closure plan with respect to the Landfill and such failure is not cured within thirty (30) days (or such shorter period if directed by NYS DEC) after written notice of such failure to Lessee, which period shall be extended for an additional period not to exceed thirty (30) days if such failure cannot be cured within such initial 30-day period provided Lessee has commenced such cure within such period and is diligently prosecuting the same to completion;

(c) Lessee is Bankrupt;

(d) Lessee permanently vacates or abandons the Lease Area; or

(e) Lessee's interest in this Agreement is assigned or transferred to any Person, whether by operation or law or otherwise, in violation of this Agreement.

2. **Town Remedies.** Upon a Lessee Event of Default, the Town may pursue any one or more of the following remedies without any notice or demand whatsoever, concurrently or consecutively and not alternatively:

(a) the Town may terminate this Agreement;

(b) upon any termination of this Agreement, whether by lapse of time or otherwise, Lessee shall remove the System from the Lease Area in accordance with the time limits stated in Article 6, Section 7 (b)(i) and (b)(ii), surrender possession and vacate the Lease Area and deliver possession thereof to the Town, and the Town may enter into and upon the Lease Area in such event and to repossess the Lease Area and to expel or remove Lessee and any others who may be occupying or be within the Premises, and to remove Lessee's signs and other evidence of tenancy and all other property of Lessee therefrom, subject only to the provisions in Section 6.6 on Removal of the System, without the Town being deemed in any manner guilty of trespass, eviction or forcible entry or detainer and without incurring any liability for any damage resulting therefrom, Lessee waiving any right to claim damages for such re-entry and expulsion, and without relinquishing the Town's right to rent or any other right given to the Town under this Agreement or by operation of law. The Town may, but need not, enter into a new lease of the Lease Area or any part thereof for such rent and upon such terms as the Town, in its sole discretion, shall determine (including the right to re-lease the premises upon such terms as the Town desires, including without limitation a greater or lesser rent, or for a greater or lesser term than

that remaining under this Agreement and the right to change the character or use made of the Premises). In connection with or in preparation for any re-leasing, the Town may, but shall not be required to, make repairs or alterations to the Premises to the extent the Town deems necessary or desirable, and Lessee shall, upon demand, pay the cost thereof, together with Town's expenses of re-leasing;

(c) until such time as the Town shall elect to terminate the Agreement and shall thereupon be entitled to recover the amounts specified herein, Lessee shall pay to the Town upon demand the full amount of all rent, including any amounts treated as additional rent under this Agreement and other sums reserved in this Agreement for the remaining Term, together with the costs of repairs or alterations and the Town's expenses of re-letting and the collection of the rent accruing therefrom (including attorney's fees and disbursements), as the same shall then be due or become due from time to time, less only such consideration as the Town may have received from any re-leasing of the Premises; and Lessee agrees that the Town may file suits from time to time to recover any sums falling due under this section as they become due. Any proceeds of re-leasing by the Town in excess of the amount then owed by Lessee to the Town from time to time shall be credited against Lessee's future obligations under this Agreement (unless previously terminated) but shall not otherwise be refunded to Lessee or inure to Lessee's benefit;

(d) the Town, without being under any obligation to do so and without waiving any Lessee default, may remedy any state of facts constituting a default for the account of Lessee, immediately upon notice in the case of emergency or if necessary to protect public health or safety, or to avoid forfeiture of a material right, or in any other case, but only provided Lessee shall have failed to remedy such default within thirty (30) days, or such longer period as may be required due to the nature of such other default (provided Lessee has commenced and is diligently prosecuting a cure), after the Town notifies Lessee in writing of the Town's intention to remedy such other default. All costs reasonably incurred by the Town to remedy such default (including, without limitation, all reasonable and documented attorney's fees and disbursements), shall be at the expense of Lessee;

(e) regardless of whether the Town exercises its termination rights pursuant to this Agreement, during the continuation of an Event of Default by Lessee, Town shall have the right, but not the obligation, and to the extent permitted by Applicable Legal Requirements and the Financing Parties, to take possession of the System until Lessee demonstrates to the reasonable satisfaction of the Town that the events giving rise to the Event of Default have been cured, and that Lessee has taken all reasonably necessary steps to ensure that such events shall not re-occur. The Town shall not be liable to Lessee for any damages, losses or claims sustained by or made against Lessee as a result of the Town's exercise of possession and operational control of the System except to the extent such damages, losses or claims result from the negligence or willful misconduct of the Town. The Town shall, if taking operational control of the System, recognize the right of any subtenant of which the Town has actual knowledge if such subtenant is then in full compliance with all of its obligations under the applicable sublease of the Premises. The

Town shall, however, be entitled to demand that any payments due to Lessee from any such subtenant be made to Town until the Event of Default has been cured. No subtenant shall incur any liability to Lessee by reason of compliance or non-compliance with any such demand; or

(f) if, on account of any breach or default by Lessee in Lessee's obligations under the terms and conditions of this Agreement, it shall become necessary or appropriate for the Town to employ or consult with an attorney concerning, or to enforce or defend, any of Town's rights or remedies arising under this Agreement or to respond to or interpret an inquiry of Lessee under the Agreement, Lessee agrees to pay all of the Town's attorney's reasonable and documented fees and court costs so incurred. Lessee expressly waives any right to trial by jury.

Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Agreement or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Agreement constitute a forfeiture or waiver of any rent due to the Town under this Agreement or of any damages accruing to the Town by reason of the violation of any of the terms, provisions and covenants contained in this Agreement.

No act or thing done by the Town or any of its agents, officers or employees during the Term shall be deemed a termination of this Agreement or an acceptance of the surrender of the Premises, and no agreement to terminate this Agreement or accept a surrender of said Premises shall be valid, unless in writing signed by the Town.

3. **Town Events of Default**. The Town shall be in default of this Agreement (a "***Town Event of Default***") if any of the following shall occur:

(a) any representation or warranty by the Town herein is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Lessee identifying the defect;

(b) the Town obstructs installation of the System or fails to take any actions necessary for the interconnection of the System required hereunder;

(c) the Town's violation of Article 5, Section 1.(d);

(d) the Town otherwise fails to perform or observe any material term or condition of this Agreement including, without limitation, violation of any Applicable Legal Requirements which materially interferes with the operation of the System, including, without limitation, with respect to the Landfill or the Landfill Closure Plan, and such failure is not cured within: (A) thirty (30) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment, after receipt of notice from Lessee identifying the failure,

unless the Town, prior to the expiration of either of the applicable period, contests in good faith any claimed failure on its part and thereafter continues to diligently do so; the Town is Bankrupt; or

(e) the Town's interest in this Agreement is assigned or transferred to any Person, whether by operation or law or otherwise, in violation of this Agreement.

4. **Lessee Remedies.** Upon a Town Event of Default, Lessee may exercise any one or more of the following remedies:

(a) terminate this Agreement; and

(b) subject to the express limitations set forth in this Agreement, Lessee shall have all rights and remedies available to it at law or in equity with respect to a Town Event of Default.

## ARTICLE 11- CASUALTY; FORCE MAJEURE

### 1. **Casualty.**

(a) If the Premises is damaged by fire or other casualty whatsoever so that such damage may reasonably be expected to materially and adversely disrupt the Lessee's operations at the Premises for more than three hundred and sixty five (365) consecutive days, then the Lessee may at any time following such fire or other casualty so long as such material and adverse disruption is continuing, terminate this Agreement upon sixty (60) days written notice to the Town.

(b) In the event of the damage to or destruction of the Landfill and/or the System by fire, explosion, the elements or otherwise during the Term, or such partial damage or destruction thereof as to render the Lease Area and/or the System wholly untenable or unfit for occupancy, or should the Landfill be so badly damaged that the same cannot (notwithstanding the Town's exercise of due diligence) be repaired within the "Permitted Repair Period" or should the System be so badly injured that the same cannot (notwithstanding Lessee's exercise of due diligence) be repaired within the Permitted Repair Period then and in any case the Term shall, at the option of either the Town or Lessee, cease and become null and void effective as of the date of such damage or destruction (the "**Casualty Date**").

(c) The "**Permitted Repair Period**" means one hundred eighty days (180) from the Casualty Date, provided, however, that Lessee shall have the right at its option, at any time within sixty (60) days after the Casualty Date, to elect to extend the Permitted Repair Period for an additional one hundred eighty (180) days (in which case the Permitted Repair Period will be three hundred sixty (360) days).

(d) Upon cessation of the Term pursuant to clause (a) above, the date set forth in

such notice shall be the Termination Date for all purposes hereunder, and the Parties shall make an appropriate adjustment, as of the Termination Date, with respect to payments due to the other under this Agreement. Nothing herein shall relieve Lessee from its obligations hereunder to restore the Lease Area.

(e) Should the System be rendered, wholly or partially untenable and unfit for occupancy, or if the Landfill shall be damaged, yet be repairable within the Permitted Repair Period, then (i) the Town shall enter and repair the Landfill with reasonable speed, except with respect to damage caused and to the extent of any damage caused wholly or partly by Lessee or any of its related entities, contractors, invitees or licensees and (ii) Lessee shall enter and repair the System with reasonable speed.

## 2. **Force Majeure Event.**

(a) Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is attributable to the occurrence of a Force Majeure Event; provided that, the Party claiming a Force Majeure Event shall (a) notify the other Party in writing of the existence of the Force Majeure Event, (b) promptly exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (c) notify the other Party in writing of the cessation or termination of said Force Majeure Event, and (d) resume performance of its obligations hereunder as soon as practicable thereafter.

(b) Notwithstanding anything in this Agreement to the contrary, if the Town claims relief pursuant to a Force Majeure Event, the obligation of Lessee to make any rent payment hereunder shall be suspended as of the date that the Force Majeure Event commenced until the Town notifies Lessee that it has resumed performance of its obligations under the Agreement. If a Force Majeure Event shall have continued for a period of at least 180 consecutive days, then Lessee may terminate this Agreement upon thirty (30) days' written notice to the Town. If at the end of such thirty (30) day period such Force Majeure Event shall still be continuing, this Agreement shall automatically terminate. Upon such termination, neither Party shall have any liability to the other, subject to any obligations which arose prior to such termination (including the payment of rent, additional rent or other payments adjusted to the date of termination on a *pro rata* basis) and subject to provisions which expressly survive termination.

## ARTICLE 12 – INSURANCE

### 1. **Lessee Coverages.** Lessee shall maintain the following insurance coverages in full force and effect throughout the Lease Term:

(a) **Lessee's General Liability Insurance.** Lessee shall obtain and maintain in full force and effect for the entire Term and until all obligations of Lessee hereunder have terminated, a commercial general liability insurance policy providing coverage for all claims for damages because of bodily injury, including death, and property damage.

The insurance shall provide the Town with additional insured status on a primary and noncontributory basis and shall be written for not less \$1,000,000 each occurrence, and \$2,000,000 general aggregate, or such other amount or amounts as required by law, whichever is greater, and shall include contractual liability applicable to the Lessee's obligations. Coverage must include the following: premises/operations, contractual liability assumed under this Agreement, products/completed operations, broad form property coverage, and personal/advertising injury.

(b) Workers' Compensation Insurance. To the extent exposure exists, Workers' compensation insurance must be provided at the Lessee's expense as required by law. Employer's Liability Insurance with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease-policy limit.

(c) Automobile Liability Insurance. Lessee shall take out and maintain at its own expense automobile liability insurance during the Lease Term. The insurance shall provide the Town with additional insured status on a primary and noncontributory basis and shall be written for not less than \$1,000,000 each accident, or such amount as required by law, whichever is greater, and shall include contractual liability applicable to the Lessee's obligations. Coverage must include the following: Owned Vehicles (if any), Leased Vehicles, Hired Vehicles, Non-Owned Vehicles;

(d) All Risk Property Coverage and Boiler and Machinery Coverage, or All Risk Builder's Risk Insurance. The Lessee shall take out and maintain, at its own expense, during construction, against damage to the System during the Lease Term in an amount no less than the full replacement cost of the System, with commercial reasonable sub-limits and deductibles. Such insurance shall provide for a waiver of the underwriters' right to subrogation against the Town, to the extent of the scope of the liability assumed by Lessee in this agreement.

(e) Excess/Umbrella Liability Insurance. The Lessee shall take out and maintain, at its own expense, an Excess/Umbrella Liability Insurance policy in an amount not less than five million dollars (\$5,000,000) for each occurrence. The insurance shall provide the Town with additional insured status on a primary and noncontributory basis.

The Lessee shall, prior to entry upon the Premises for any purpose authorized hereby, deliver to the Town certificates of insurance providing the Town with additional insured status and evidencing all of the foregoing coverages required by this Article 12, in form and substance satisfactory to the Town, and shall deliver to the Town certificates thereof so naming the Town for any insurance about to expire within (10) days of such expirations. All such insurance policies shall contain an endorsement requiring thirty (30) days written notice to the Town prior to cancellation of any such policy or policies except for (ten) 10 days' for non-payment of premium. Compliance by the Lessee with the insurance requirement, however, shall not relieve any contractor or subcontractor from liability

pursuant to Article 13, except as provided in Article 13, Section 3.

2. **Town Coverages.** The Town shall maintain the following insurance coverages in full force and effect throughout the Lease Term:

(a) Commercial General Liability Insurance covering Lessee as insured against claims of bodily injury, personal injury, property damage (including loss of use thereof), and sudden and accidental pollution arising out of the operations at the Premises with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each occurrence, and \$2,000,000 general aggregate.

(b) Property Insurance covering the physical loss or damage (including the loss of use) to the Site, Lessee Property, and any other real or personal property owned or controlled by Lessee, which shall be written on an “all risks” of physical loss or damage basis for the full replacement cost value and shall include coverage for damage or other loss caused by fire or other peril including, but not limited to, vandalism and malicious mischief, theft, and explosion.

(c) Automobile Liability Insurance with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each accident for owned (if any), hired or non-owned vehicles;

(d) To the extent Lessee has any employees, (i) Employer’s Liability Insurance with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): \$1,000,000 each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease-policy limit, and (ii) Worker’s Compensation Insurance to the extent required by applicable law.

(e) Umbrella or Excess Liability Insurance, written on follow form basis for the policies identified in clause (a) (including sudden and accidental pollution), clause (c), and clause (d)(i) above, and with limits of liability not less than \$5,000,000.00.

## ARTICLE 13 – INDEMNIFICATION

1. **Indemnification of Town.**

(a) Subject to Article 13, Section 3, the Lessee shall indemnify, save harmless and defend the Town and its officers, employees, and agents (collectively, the “**Town Indemnified Parties**”) from and against all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys’ fees and disbursements, that may be imposed upon or incurred by or asserted against any Town Indemnified Party during the Term as a result of any accident, injury, or damage to any person or property occurring in, on or about the Lease Area or elsewhere arising from or related to the construction,

installation, operation, repair, maintenance or replacement of the System caused by: (i) the negligence or intentional misconduct of Lessee or any of its agents, contractors, subcontractors, servants, employees, or invitees; or (ii) any failure on the part of Lessee or any of its agents, contractors, subcontractors, subtenants, servants, employees, licensees or invitees in, on or about the Lease Area to fully comply with the Applicable Legal Requirements of any of the Lessee's other obligations hereunder.

(b) In case any action or proceeding is brought against any Town Indemnified Party by reason of any such claim, the Town may, but shall not be obligated to, elect that Lessee defend such action or proceeding with counsel selected by Lessee and approved by the Town (such approval not to be unreasonably withheld or delayed). Upon written notice from Town of such election, Lessee shall defend such action or proceeding at Lessee's expense.

## 2. Indemnification of Lessee.

(a) Subject to Article 13, Section 3 below, to the extent permitted by Applicable Legal Requirements, the Town shall indemnify, save harmless and defend Lessee and its officers, employees, agents, and any subtenants of the Leased Area and/or System (collectively, the "**Lessee Indemnified Parties**") from and against all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any Lessee Indemnified Party during the Term as a result of any accident, injury, or damage to any person or property occurring in, on or about the Lease Area, the Premises or the System or any part thereof caused by: (i) the negligence or intentional misconduct of the Town or any of its agents, contractors, subcontractors, servants, employees, or invitees; or (ii) any failure on the part of the Town or any of its agents, contractors, subcontractors, servants, employees, licensees or invitees in, on or about the Premises to fully comply with any of the Town's obligations hereunder.

(b) In case any action or proceeding is brought against any Lessee Indemnified Party by reason of any such claim, such Lessee Indemnified Party may, but shall not be obligated to, elect that the Town defend such action or proceeding with counsel selected by the Town and approved by such Lessee (such approval not to be unreasonably withheld or delayed). Upon written notice from Lessee of such election, the Town shall defend such action or proceeding at the Town's expense.

## 3. Limitations of Liability. EXCEPT FOR A BREACH OF THIS AGREEMENT DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF EITHER PARTY, (A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM A BREACH OF THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY AND (B) IN NO EVENT

**SHALL LESSEE'S LIABILITY TO TOWN INDEMNIFIED PARTIES UNDER THIS AGREEMENT EXCEED THE AMOUNT OF INSURANCE PROCEEDS LESSEE IS ENTITLED TO RECEIVE IN RESPECT OF THE APPLICABLE CLAIM UNDER ARTICLE 12 ABOVE.**

4. **Survival.** The provisions of this Article 13 shall survive the expiration or termination of the Agreement.

#### **ARTICLE 14- DISPUTE RESOLUTION.**

1. **Binding Arbitration.** The Parties shall meet, confer and negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a "**Dispute**"). Any Dispute that is not settled to their mutual satisfaction within the applicable notice or cure periods provided in this Agreement shall be settled by arbitration between the Parties conducted in New York, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date that a Party gives notice of its demand for arbitration under this Article 14. The submitting Party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party and the Parties shall select a single neutral arbitrator. If the Parties cannot agree on a single neutral arbitrator within fifteen (15) days thereafter, then either Party may request that the American Arbitration Association select and appoint a neutral arbitrator who shall act as the sole arbitrator. The Parties may engage in discovery in connection with the arbitration as provided by the New York statutes and shall be entitled to submit expert testimony or written documentation in such arbitration proceeding. The decision of the arbitrator shall be final and binding upon the Parties and shall be set forth in a reasoned opinion, and award may be enforced thereon by either Party in a court of competent jurisdiction provided, however, that any such action or proceeding shall be commenced and prosecuted only in a court of competent jurisdiction with the State of New York, County of Ulster and provided further that the arbitrator shall not have the authority to award punitive, exemplary or analogous damages. Any award of the arbitrator shall include interest from the date of any damages incurred for breach or other violation of this Agreement at the Interest Rate. Each Party shall each bear the cost of preparing and presenting its own case, provided, however, that the Parties hereby agree that the prevailing party in such arbitration shall be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the dispute. The cost of the arbitration, including the fees and expenses of the arbitrator, shall initially be shared equally by Parties, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing party. The arbitrator shall be instructed to establish procedures such that a decision can be rendered within one-hundred eighty (180) calendar days of the appointment of the arbitrator.
2. **Exceptions to Arbitration Obligation.** The obligation to arbitrate shall not be binding upon any Party with respect to (a) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent

jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute, (b) actions to collect payments not subject to a bona fide Dispute or (c) claims permitted hereunder against third parties. Any such actions or proceedings shall be commenced and prosecuted only in a court of competent jurisdiction within the State of New York, County of Ulster.

## ARTICLE 15 – NOTICES

1. **Notice**. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when delivered.
2. **Financing Party Notice**. Any notice or other communication which the Town shall desire or is required to give to or serve upon a Financing Party in accordance with the terms of this Agreement shall be in writing and shall be served in accordance with the provisions of § 15.1, addressed to such Financing Party at such party's addresses provided in writing by a Financing Party or by Lessee, and any notice or other communication which the Financing Party shall desire or be required to give to or serve upon Town shall be deemed to have been duly given or served if sent in accordance with the provisions of Article 15, Section 1 or at such other address as shall be designated by Town by notice in writing given to such Financing Party in accordance with the provisions of this Article 15.
3. **Notice Addresses**.

### **Town Address**

Town of New Paltz, New York  
Town Supervisor, 52 Clearwater Road  
New Paltz, NY 12561

### **Lessee Address:**

SL New Paltz Solar I, LLC  
c/o SunLight General Capital  
135 E 57<sup>th</sup> St, P.O. Box 8543  
New York NY 10150

4. **Address for Rent Payment**. All rent payments under this Agreement shall be sent to the Town's address as provided above and shall be sent by regular first-class mail postage prepaid or as otherwise agreed by the Parties.

## ARTICLE 16 – MISCELLANEOUS

1. **Rules of Interpretation**. Section headings in this Agreement are for convenience only and shall not affect the interpretation of this Agreement. References to sections are,

unless the context otherwise requires, references to sections of this Agreement. The words “hereto”, “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word “including” shall be deemed to be followed by the words “without limitation”. In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern.

**2. No Limitation of Regulatory Authority.**

The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by the Town to issue or cause the issuance of any approval or permit, or to limit or otherwise affect the ability of the Town or any regulatory authority of the Town, to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

**3. Subordination to Existing Leases, Easements and Rights of Way.**

Lessee acknowledges and understands that this Agreement is subject and subordinate to the UCRRA and to all pre-existing leases, easements, rights of way, declarations, restrictions or other matters of record. The Town represents that there is no restriction by agreement or otherwise which restricts the Town’s right to enter into this Agreement or which would impair, interfere with, or be superior to or have priority over the leasehold estate and other rights granted hereunder to Lessee. The Town reserves the right to grant additional licenses, easements, leases or rights of way on the Premises other than the Lease Area, whether recorded or unrecorded, as may be necessary, which do not cause shading of the System or otherwise unreasonably interfere with Lessee’s access to or exclusive use of the Lease Area and the operation of the System; *provided however* the Town shall execute and shall cause any holder of an interest in the Premises senior to that of the Lessee to execute, a form of a non-disturbance agreement substantially in the form of Exhibit D hereto.

**4. Compliance.**

(a) Lessee shall comply with all Applicable Legal Requirements relating to the System. The Town shall comply with all Applicable Legal Requirements relating to the Landfill, including without limitation, the Landfill Closure Plan.

(b) Upon knowingly encountering any Hazardous Materials at the Premises, Lessee will stop work in the affected area and duly notify the Town and, if required by Applicable Legal Requirements, any other Governmental Authority with jurisdiction over the Lease Area. If Lessee reasonably believes the Hazardous Materials may require removal or remediation, or that otherwise impairs or prevents installation, operation or testing of the System, Lessee shall promptly notify the Town, and Lessee may, in its sole discretion, suspend installation, operation or testing of the System until such time as the Town has

removed the Hazardous Materials and remediated the Lease Area to Lessee's satisfaction. Lessee shall have no responsibility or liability in respect of Hazardous Materials existing at the Premises (other than any (i) Hazardous Materials brought to the Lease Area by or on behalf of Lessee) or (ii) other Landfill Conditions.

(c) The Town is not responsible for any Hazardous Materials introduced to the Premises by Lessee, nor is the Town required to remediate an affected area related thereto; provided, however, the Town shall immediately perform all necessary and desirable remediation in respect of Hazardous Materials for which it is responsible under this Agreement. Lessee shall not, and shall not direct, suffer or permit any of its agents, contractors, subcontractors, employees, leases, or invitees at any time to manufacture or dispose of in or about the Premises any Hazardous Materials, including but not limited to flammables, explosives, and radioactive materials. Lessee agrees to comply with all Applicable Legal Requirements pertaining to the use, storage and disposal of Hazardous Materials ("**Environmental Laws**") at the Premises. Lessee shall indemnify, defend and hold harmless the Town and its agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of Environmental Laws caused by Lessee or Lessee's agents, contractors, subcontractors, employees, lessees or invitees at the Premises. In addition, Lessee shall reimburse the Town for any and all costs related to investigation, clean up and/or fines incurred by Town for non-compliance with Environmental Laws, which are caused by Lessee or Lessee's agents, contractors, subcontractors, employees, lessees or invitees at the Premises. Town reserves the right to inspect the Lease Area for purposes of verifying compliance with these Hazardous Materials requirements.

#### **5. Limited Effect of Waiver.**

The failure of either Party to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

#### **6. Survival.**

In addition to the other provisions of this Agreement that shall survive any expiration or termination of this Agreement in accordance with the express terms thereof, the provisions of Article 1 (Defined Terms), Article 2, Section 7(a) (Title to System), Article 6, Section 7 (Removal), Article 9 (Assignment and Subcontracting), Article 13 (Indemnification), Article 14 (Dispute Resolution), and Article 16 (Miscellaneous) shall survive the expiration or termination of this Agreement for any reason; provided, that the survival of any particular provision or set of provisions shall be limited in duration if and to the extent such survival is explicitly limited herein or otherwise limited by Applicable Legal Requirements.

**7. Severability.**

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

**8. Non-recourse.**

The obligations of the Town and Lessee under this Agreement are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, any of the Town's officers, employees, agents nor of Lessee's trustees or board of directors and officers, as the case may be, or any beneficiaries, employees, agents or the like thereof. In no event shall the Town ever be liable to the Lessee for any indirect or consequential damages under the provisions of this Agreement.

**9. Representations and Warranties.**

Each Party hereby represents and warrants to the other, as of date hereof, that:

(a) Organization. It is duly organized, validly existing and in good standing under the laws of the state in which the Lessee is located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.

(b) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.

(c) Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(d) No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority which could reasonably

be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

*(End Terms and Conditions.)*

**OPTION AND SOLAR LEASE AGREEMENT**

**EXHIBIT A**

**PREMISES AND LEGAL DESCRIPTION**

The Premise and Legal Description are found below as of the Effective Date. The Parties acknowledge and agree that the actual System design, layout and Premises location will be updated as mutually agreed by the Parties prior to the Lease Term and each applicable Exhibit will be updated accordingly without requiring any amendment of this Agreement or further consent.

10 – 100 Clearwater Road, Municipality of Town of New Paltz, New York  
Total Acreage/Size: 189.4 acres  
Deed Book, Page: 1210, 349  
Tax Map ID #: 78.2-3-6  
Zoning Code: A3

**OPTION AND SOLAR LEASE AGREEMENT**

**EXHIBIT B**

**LEASE AREA DESCRIPTION & PRELIMINARY DESIGN LAYOUT**

The Lease Area is shown below in the System Layout.

The Parties acknowledge and agree that the actual System design, layout and Lease Area within the Premises will be updated as mutually agreed by the Parties prior to the Lease Term and each applicable Exhibit will be updated accordingly if necessary.

**Figure for Exhibit B-System Layout:**



**OPTION AND SOLAR LEASE AGREEMENT**

**EXHIBIT C**

**DESCRIPTION OF SYSTEM & GROUND COVER  
REQUIREMENTS**

Section 1.

Lessee anticipates that the System size will be approximately 300,000 square feet in surface with the following characteristics:

1. Size (MWdc): 3.0
2. Size (MWac): 2.5
3. Yield (kWh/kW): 1,292

Section 2.

Prior to the Commencement Date, Lessee will provide to the Town the following remaining information with respect to the System, based on the final, approved design:

1. Solar Panel Manufacture, Model
2. Module Count
3. Array Area, Landfill Areas (acres)
4. Array Area, Adjacent to Landfill Areas (acres)
5. Inverters Manufacture, Model
6. Inverter Count (units)
7. DC:AC ratios
8. Racking Type
9. Racking Angle, Fixed
10. Racking Angle, Tracking

Section 3.

Lessee to comply with the following Ground Cover Requirements:

1. Restoration Methods, Landfill – DEC and UCRRA approved vegetation only
2. Restoration Methods, Adjacent to Landfill Areas
  - a. Include low-till methods, selected grubbed and stump remnants,
  - b. Include Native, Pollinator Friendly species, high quality, high level of biodiversity
3. Fenced Enclosure, Landfill
  - a. inclusive of minimum one (1) sub-fenced pollinator habitat areas, minimum 300 ft<sup>2</sup> with separate gate, top protection
  - b. include fencing areas with small animal access
4. Fenced Enclosure, Adjacent to Landfill Areas

- a. Minimum 10% fenced enclosure surplus set-aside
  - b. Inclusive of minimum two (2) sub-fenced pollinator habitat areas, each minimum 300 ft<sup>2</sup> with separate gates, top protection
  - c. Include fencing areas with small animal access
5. Mowing on Landfill: Lessee shall be responsible for mowing areas of Lease Area on the landfill cap areas; related solar facility areas, at the same quality, frequency and timing of the UCRRA (which is currently once per summer in the month of August) to avoid avian disturbance but that may change from time to time.

#### Section 4.

The Parties acknowledge and agree that the actual System design, layout and Premises location will be updated as mutually agreed by the Parties prior to the Lease Term and each applicable Exhibit will be updated accordingly without requiring any amendment of this Agreement or further consent.

#### Section 5.

In addition to maintaining the System, Lessee will maintain a pollinator-friendly habitat. Lessee will plant native seed to create an ecologically-friendly pollinator habitat that is specifically designed for low maintenance upkeep after year 5 of the Term. The use of low-growing native seed mixes will provide a habitat for native wildlife, while lowering the frequency and cost of yearly maintenance after vegetation has been established.

**OPTION AND SOLAR LEASE AGREEMENT**

**EXHIBIT D**

**FORM OF NON-DISTURBANCE AGREEMENT**

**NON-DISTURBANCE AGREEMENT**

THIS NON-DISTURBANCE AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between SL New Paltz Solar I, LLC (“**Lessee**”) and the [TOWN OF NEW PALTZ, Ulster County, New York] (“**Town**”), and [LIEN HOLDER] (“**Lien Holder**”).

A. WHEREAS, the TOWN (“**Town**”) and Lessee executed that certain Option and Solar Lease Agreement, dated \_\_\_\_\_ (“**Lease**” whereby the Town granted Lessee certain lease, easement and other rights necessary to develop, construct, own, and operate a photovoltaic solar power generation system on, over, and under property described in the attached Exhibit A (“**Premises**”); and

B. WHEREAS, the parties hereto desire to assure Lessee’s possession and control of the Premises under the Lease upon the terms and conditions therein contained.

**NOW, THEREFORE**, for and in consideration of the mutual promises herein made and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed by the parties hereto, the parties hereto do hereby agree as follows:

**AGREEMENT**

1. **Consent and Non-Disturbance.** The [Town][Lien Holder] hereby consents to Lessee’s construction, installation, ownership, operation, repair, maintenance and removal of Grantee’s solar electric generating facilities on the Premises. [Town][Lien Holder] shall not interfere with Lessee’s operations or activities on the Premises and Town shall not disturb Lessee’s right of quiet and peaceful possession of the Premises.

2. **Notice.** All notices which may or are required to be sent under this Agreement shall be in writing and shall be sent by certified or registered U.S. mail, commercial overnight delivery service, or transmitted by facsimile or email, and sent to the party at the address appearing below or such other address as any party shall hereafter inform the other party by written notice given as set forth above:

Lessee:

SL New Paltz Solar I, LLC  
c/o SunLight General Capital  
135 E 57th St  
New York NY 10022  
Attention: \_\_\_\_\_

[Town]:

Town of New Paltz, New York  
Town Supervisor, 52 Clearwater Road  
New Paltz, NY 12561  
Attention: TOWN SUPERVISOR

All notices delivered as set forth above shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next business day if sent at any other time) and upon sending by email (if sent during normal business hours or the next business day if sent at any other time), on the business day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or three Business Days after deposit in the mail when sent by U.S. mail.

3. **Assignment.** The parties hereto may assign this Agreement without the need for consent from or notice to the other party. This Agreement shall inure to the benefit of and be binding upon the parties, their successors in interest, heirs and assigns.

4. **Miscellaneous.** This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement may be executed in separate counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

5. **Legal Proceedings.** Should any action or proceeding be commenced to enforce any of the provisions of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorneys' fees.

**IN WITNESS WHEREOF**, the parties hereto have caused this Non-Disturbance Agreement to be executed as of the day and year first above written.

**LESSEE:**

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

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

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

**[TOWN]:**

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

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

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

**[LIEN HOLDER]:**

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

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

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



## OPTION AND SOLAR LEASE AGREEMENT

### EXHIBIT E

#### Lease Term Rent Assumptions & Adjustments

The Parties hereby acknowledge and agree that the Initial Lease Term Rent shall be an amount to be calculated as follows: base rent of \$57,000 ("Base Rent") plus or minus the adjustment provided in Provision 2 through 6 below but the Parties agree that the minimum Lease Term Rent shall be no less than \$15,000 and the maximum Lease Term Rent shall be no more than \$99,000.

Further, such Lease Term Rate has been determined and agreed with the provisions described in this Exhibit E, and such Lease Term Rate shall be adjusted as provided herein, as applicable.

The Parties will work together in good faith to determine and apply any such adjustments. No later than 10 days following the achievement of the commercial operation of the Project, Lessee will document such Lease Term Rent applicable to the Agreement upon application of the adjuster(s) provided hereto into a new Table 1 to this Exhibit.

##### Provision 1. Total Acres

**The Leased Area will comprise approximately thirteen (13) total acres and that Lessee utilization of less than that number of total acres will not impact the baseline amount of Lease Term Rent.**

##### Provision 2. Taxes

**\$0 sales tax liability in respect of the System equipment; and \$0 annual property tax liability for Lessee.**

Ulster County is listed as a taxing jurisdiction which provides exemptions for commercial solar energy systems equipment in Publication 718-CS, *Local Sales and Use Tax Rates on Sales and Installations of Commercial Solar Energy Systems Equipment*, published in February 2018. In the event that Lessee becomes liable or responsible for any sales tax in respect of the System equipment and/or property tax, the Town shall indemnify and hold harmless Lessee for all such liability, and in its sole discretion, Lessee may offset its Lease Term Rent payments in the amount of any such liability.

##### Provision 3. Prevailing Wage

**Construction of the photovoltaic system will not require the payment of prevailing wage.**

In the event that the project becomes subject to the prevailing wage rate as the result of changes or modifications in the financing for or manner of construction or implementation of the intended improvement occasioned as the result of actions or determinations undertaken on the part of both the town and the lessee, the Lease Term Rent will be reduced proportionally to achieve substantially the same relative economic benefit to Lessee.

##### Provision 4. Interconnection

**System interconnection cost = \$0.10 per Watt.**

In the event there is a material increase in the cost to interconnect the System, the Parties agree that the Lease Term Rent shall be offset dollar for dollar to account for such increase in interconnection costs, until such time as the incremental interconnection costs have been fully offset.

##### Provision 5. Annual Lease Term Rent Escalator

The Parties agree that the Lease Term Rent shall increase at each anniversary of the Lease Commencement Date by 2% as described in Table 1 of this Exhibit E. Such increase shall be applicable to the Lease Term Rent payment directed in Article 4, Part 3 b). Table 1 of this Exhibit E presents the agreed Lease Term Rent each year following the Lease Commencement Date.

##### Provision 6. NYSERDA Rebate and VDER Adjustment to Lease Term Rent

NYSERDA Rebate adjuster: The Base Rent assumes the following NYSERDA rebates are available:

- Upstate Commercial Base Incentive Block 17 of \$0.11 per Watt DC providing an expected rebate of \$330,000 based on the 3.0 MW DC system size.
- Central Hudson Community Adder of \$0.30 per Watt DC providing an expected rebate of \$900,000 based on the 3.0 MW

DC system size.

- Landfill/Brownfield Adder of \$0.15 per Watt DC providing an expected rebate of \$450,000 based on the 3.0 MW DC system size.

The Parties agree further that additional incentives offered by NYSERDA or any other New York State agency or jurisdiction that are functionally equivalent to the NY-Sun rebate (i.e. incentives that provide for an upfront payment or a cash production based incentive but for the avoidance of doubt excluding any federal tax credit or federal cash incentives) (such incentives, the "Other Incentives") may be made available after the Effective Date to the Lessee. The calculation below of "increase" or "decrease" shall be done net of the impact of such Other Incentives in a commercially reasonable manner by Lessee upon reasonable advance notice to and in consultation with the Town.

In the event that any of the three incentives above (Upstate Commercial Base Incentive Block, Central Hudson Community Adder, or Landfill/Brownfield Adder) changes, for each incremental \$0.05 per Watt DC increase in the incentive, the Rent shall be increased by \$14,250 and the values presented in Table 1 will be correspondingly increased. For example, should the total sum of the NYSERDA rebate incentives increase from \$0.56 per Watt DC to \$0.66 per Watt DC (i.e. a \$0.10 per Watt DC increase), the rent will be \$85,500 (i.e. a \$28,500 total increase in rent) at year-1.

In the event that any of the three incentives above (Upstate Commercial Base Incentive Block, Central Hudson Community Adder, or Landfill/Brownfield Adder) changes, for each incremental \$0.05 per Watt DC decrease in the incentive, the Rent shall be decreased by \$14,250 and the values presented in Table 1 will be correspondingly decreased. For example, should the total sum of the NYSERDA rebate incentives decrease from \$0.56 per Watt DC to \$0.46 per Watt DC (i.e. a \$0.10 per Watt DC decrease), the rent will be \$28,500 (i.e. a \$28,500 total decrease in rent) at year-1.

VDER Adjuster: The Value of Distributed Energy Resources rate schedule as follows, calculated from the Value Stack Calculator version 2.5 at the time of the RFP response:

Year	Year 1
RFP VDER rate (\$/kWh)	0.0897

In the event the actual Year 1 VDER (as determined by the Lessee using the latest Value Stack Calculator published by NYSERDA upon the Lease Commencement Date) is more than the RFP VDER rate above, the initial Lease Term Rent listed shall be increased by \$3,300 per year for each \$0.0010/kWh increase in the VDER rate and the values presented in Table 1 will be correspondingly increased.

In the event the actual Year 1 VDER (as determined by the Lessee using the latest Value Stack Calculator published by NYSERDA upon the Lease Commencement Date) is less than the RFP VDER rate above, the initial Lease Term Rent shall be decreased by \$3,300 per year for each \$0.0010/kWh decrease in the VDER rate and the values in Table 1 will be correspondingly decreased.

Notwithstanding anything else to the contrary, the VDER adjuster impact on the rent, upward or downward, shall not exceed \$16,500 per year (equivalent to 0.5 cents per kWh).

**Table 1 of Exhibit E follows on the next page.**

**Table 1. Lease Term Rent each year following the Lease Commencement Date**

<u>Anniversary of the Lease Commencement Date</u>	<u>Lease Term Rent</u>	<u>Cumulative Lease Term Rent</u>
Lease Commencement Date	\$57,000	\$57,000
1st Anniversary	\$58,140	\$115,140
2nd Anniversary	\$59,303	\$174,443
3rd Anniversary	\$60,489	\$234,932
4th Anniversary	\$61,699	\$296,630
5th Anniversary	\$62,933	\$359,563
6th Anniversary	\$64,191	\$423,754
7th Anniversary	\$65,475	\$489,229
8th Anniversary	\$66,785	\$556,014
9th Anniversary	\$68,120	\$624,134
10th Anniversary	\$69,483	\$693,617
11th Anniversary	\$70,872	\$764,489
12th Anniversary	\$72,290	\$836,779
13th Anniversary	\$73,736	\$910,514
14th Anniversary	\$75,210	\$985,725
15th Anniversary	\$76,714	\$1,062,439
16th Anniversary	\$78,249	\$1,140,688
17th Anniversary	\$79,814	\$1,220,502
18th Anniversary	\$81,410	\$1,301,912
19th Anniversary	\$83,038	\$1,384,950
20th Anniversary	\$84,699	\$1,469,649
21st Anniversary	\$86,393	\$1,556,042
22nd Anniversary	\$88,121	\$1,644,163
23rd Anniversary	\$89,883	\$1,734,046
24th Anniversary	\$91,681	\$1,825,727
25th Anniversary	\$93,515	\$1,919,242
26th Anniversary	\$95,385	\$2,014,626
27th Anniversary	\$97,293	\$2,111,919
28th Anniversary	\$99,238	\$2,211,157
29th Anniversary	\$101,223	\$2,312,381
30th Anniversary	\$103,248	\$2,415,628
31st Anniversary	\$105,313	\$2,520,941
32nd Anniversary	\$107,419	\$2,628,360
33rd Anniversary	\$109,567	\$2,737,927
34th Anniversary	\$111,759	\$2,849,685
35th Anniversary	\$113,994	\$2,963,679
36th Anniversary	\$116,274	\$3,079,953
37th Anniversary	\$118,599	\$3,198,552
38th Anniversary	\$120,971	\$3,319,523
39th Anniversary	\$123,390	\$3,442,913
40th Anniversary	\$125,858	\$3,568,771
41st Anniversary	\$128,375	\$3,697,147
42nd Anniversary	\$130,943	\$3,828,090
43rd Anniversary	\$133,562	\$3,961,651
44th Anniversary	\$136,233	\$4,097,884
45th Anniversary	\$138,958	\$4,236,842

End.

**OPTION AND SOLAR LEASE AGREEMENT**

**EXHIBIT F**

**Additional Terms and Conditions**

The Parties hereby acknowledge and agree that the Agreement includes the following additional Terms and Conditions:

1. Lessee shall strive to include Local Companies, Contractors, and work force on the planning, design, construction, operations and maintenance of this project. Those actions shall include providing the Town a schedule of upcoming bid dates and requirements (RFQs or RFPs) for professional services, contractor and vendor opportunities at least 30 days before each are due to the Lessee.
2. Lessee shall provide, install, update as necessary and maintain at least two Educational Kiosks inside the Town of New Paltz at locations provided or authorized by the Town of New Paltz from the Effective Date of the Agreement until the end of the Term. The Educational Kiosks shall each consist of interactive media devices, provided at reasonable cost by the Lessee. The Lessee shall provide information on the benefits and performance of the solar array including solar production, greenhouse gas production, and environmental benefits.

END.