

GROUND LEASE

This GROUND LEASE (the “Lease”) is made and entered into as of [REDACTED], 2020 (the “Effective Date”) by and between Town of Marlborough, New York, a municipal corporation duly established with a principal place of business at 21 Milton Turnpike, Suite 200, Milton NY 12547 (the “Landlord”), and Nexamp Solar, LLC, a Delaware limited liability company (the “Tenant”) (each a “Party” and together, the “Parties”).

WHEREAS, Landlord owns the real property located at 20 Baileys Gap Road, Marlborough, New York, containing approximately 82.33 acres, as more particularly described in Exhibit A attached hereto (the “Property”); and

WHEREAS, the Property is or was formerly a solid waste management facility authorized by the New York State Department of Environmental Conservation and other applicable Government Authority (“Landfill”); and

WHEREAS, Landlord is responsible for ongoing Landfill Uses and Obligations at the Landfill, which may include post-closure operation, monitoring, and maintenance obligations; and

WHEREAS, the parties entered into a lease option agreement, dated [REDACTED], 2020, under which Landlord granted to Tenant the right to perform specific due diligence work regarding a potential Facility and an option to lease the Lease Area for the project (the “Option Agreement”), and under which Tenant did exercise its Option; and

WHEREAS, Landlord is willing to lease the Lease Area to Tenant, and Tenant is willing to lease the Lease Area from Landlord, to develop, construct, operate and maintain a solar powered electric generation and energy storage facility and any uses necessary or ancillary thereto.

Exhibits:

- A: Property Description
- B: Lease Area and Easement Descriptions
- C: Existing Encumbrances
- D: CPI Adjustment

NOW THEREFORE, in consideration of the premises, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

SECTION 1. DEFINITIONS. Capitalized terms within this Lease shall have the meanings as set forth in the Glossary of Terms, attached hereto and incorporated herein.

SECTION 2. LEASE. Landlord hereby leases the Lease Area to Tenant and Tenant leases the Lease Area from Landlord for the Permitted Uses for the Term. Subject to the rights of Landlord following an Event of Default by Tenant, or as otherwise provided herein, Tenant shall have quiet and peaceful possession of the Lease Area and any other rights granted by this

Lease for the entire Term without hindrance, interruption, suit, trouble or interference of any kind by Landlord or any other person or entity claiming (whether at law or in equity) by, through or under Landlord.

This Ground Lease, the Lease Area and the Easements are all subject to Landlord's Landfill Obligations.

SECTION 3. EASEMENTS.

(a) Landlord hereby grants the following easements (the "Easements") to Tenant for the following purposes, all as detailed on Exhibit B:

(i) A non-exclusive right of pedestrian, vehicular and equipment access to the Facility across or through Landlord's remaining property at all times, which is necessary or convenient for ingress and egress to the Facility ("Access Easement"). Landlord and Tenant acknowledge that portions of the Access Easement will serve the Facility and the Town Transfer Station located upon the Property, and that neither Party shall impede, block or interfere with the other Party's use of such portions of the Access Easement in a manner that interferes with the operation of the Town Transfer Station or the Project.;

(ii) an exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect each Facility unit to the LDC electrical distribution system, the location of which will be determined by the LDC prior to the Commercial Operation Date, provided that no such work shall interfere with the operation of the Town Transfer Station which is located on the Property; and

(iii) a solar easement, upon which Landlord shall not construct buildings or structures, or plant new trees or vegetation of any type or allow any trees or other vegetation on the Property which now or hereafter in Tenant's reasonable opinion may be a hazard to the Facility, overshadow or otherwise block or interfere with access of sunlight to the Facility and/or interfere with Tenant's exercise of its rights hereunder. In the event of any violation of this solar easement by Landlord, in the event Landlord fails to remove any buildings or other structures that violate this easement within ninety (90) days' notice from Tenant, Tenant may (but shall not be obligated to) remove, at Landlord's cost, any buildings or other structures which violate this easement. Notwithstanding anything herein to the contrary, Landlord shall reimburse Tenant for such costs as an abatement of Rent.

(iv) a non-exclusive easement of approximately 30,000 square feet to be located at a mutually acceptable location on the Property for temporary (A) storage and staging of tools, materials and equipment, (B) construction laydown, (C) parking of construction crew vehicles and temporary construction trailers, (D) vehicular and pedestrian access and access for Facility construction activities, and (E) other facilities

reasonably necessary to construct, erect, install, expand, modify or remove the Facility. Upon completion of each construction phase, said easement shall terminate.

(b) Landlord's grant of Easements in Sections (3)(a)(i) through (3)(a)(iii) shall commence on the Effective Date and continue throughout the Term and any extensions of the Term. Landlord's grant of Easement in Sections (3)(a)(iv)) shall commence on the Effective Date and shall continue through the Development and Construction Period, during the Operations Period if Tenant is performing activities associated with expanding, modifying or repairing the Facility, and during the Decommissioning Period, but only for the amount of time associated with such activity.

(c) If required by the LDC, Landlord shall grant to the LDC an exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient to interconnect each unit of the Facility to the LDC electrical distribution system, the location of which will be determined by the LDC prior to the Commercial Operation Date. Landlord's grant under this Section 3(c) shall commence on its effective date and continue through the Term and any extensions of the Term, unless otherwise required by the LDC.

(d) At Tenant's request, Landlord shall timely execute agreements necessary to give effect to the grant of Easements under this Section 3.

SECTION 4. TERM; EARLY TERMINATION.

(a) This Lease will consist of a Development and Construction Period, an Operations Period, and a Decommissioning Period.

(i) Development and Construction Period. The Development and Construction Period will begin on the Effective Date and will terminate on the earliest of:

(A) Delivery by Tenant of notice of termination in accordance with Section 4(b);

(B) 365 days after the commencement of the Development and Construction Period, except that such period shall automatically extend for up to two (2) additional periods of six (6) months each for permitting and interconnection delays, or for changes in solar market conditions regarding New York solar programs. Extensions under this subsection are contingent upon Tenant providing evidence, at Landlord's reasonable request, that it continues to actively pursue developing the Facility; and

(C) the day after the Commercial Operation Date.

If the Commercial Operation Date does not occur prior to expiration of the Development and Construction Period (as it may be extended), this Lease shall terminate by its own terms with no action being required of either Party. Termination of this Lease

in accordance with this Section 4(a)(i) shall not release either Party from any obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

(ii) Operations Period. The Operations Period will commence at 12:01 a.m. on the day after the Commercial Operation Date and will end at 11:59 p.m. on the 25th anniversary of the Commercial Operation Date. Tenant may extend the Operations Period, first for one (1) ten (10) year term, and then for one (1) additional five (5) year term. At least ninety (90) days prior to the beginning of an extension term, Tenant shall deliver in writing notice to Landlord of Tenant's intent to exercise that extension option, and Tenant and Landlord, at Tenant's expense, shall prepare and record any amendments to the Notice of Lease and/or any other documents necessary to evidence and give effect to the extension.

(iii) Decommissioning Period. The Decommissioning Period shall commence on the expiration of the Operations Period, and any extensions thereto, or an earlier termination of this Lease following a Tenant Default, and shall continue for a period of 180 days, (provided that if such 180 day term begins or ends within the months of December, January, February, March, or April, the Decommissioning Period shall extend to the next-occurring July 31) whereupon this Lease shall expire and shall be of no further force and effect, except that such termination shall not release or modify any of the obligations of the Parties arising prior to such termination.

(b) At any time during the Development and Construction Period, including any extensions thereof, Tenant may, in its sole discretion, terminate this Lease upon thirty (30) days' written notice to Landlord (the thirtieth day after delivery of the notice shall be the effective date of the termination). Tenant shall execute and deliver to Landlord any amendments to the Notice of Lease and/or other documents reasonably necessary to evidence terminating this Lease. Termination of this Lease in accordance with this Section 4(b) shall not release either Party from any obligations arising prior to the effective date of such termination, but neither Party shall have the obligation to perform any obligations hereunder which, but for such termination, would have arisen after the effective date of such termination.

SECTION 5. TENANT'S USE OF THE LEASE AREA. Tenant may use the Lease Area and Easements for Permitted Uses, subject to limitations and conditions set forth below and as set forth in Sections 2 and 3 of this Ground Lease:

(a) Development and Construction Period. During the Development and Construction Period, Tenant and its agents, employees, contractors, and/or subcontractors may use the Lease Area for development work and tests, project permitting and interconnection, and other activities associated with constructing the Facility. Tenant agrees to inform its employees, agents and invitees of the presence of any hazardous conditions on the Property and Landfill known to Tenant.

(b) Operations Period. During the Operations Period, Tenant may use the Lease Area for any of the Permitted Uses.

(c) Decommissioning Period. Promptly following the Operations Period expiration, or an earlier termination of this Lease following a Tenant Default, Tenant shall cease the Facility's commercial operation, shall remove all structures, equipment, security barriers, and transmission lines from the Lease Area, and dispose of all Facility materials in accordance with Applicable Law, all at Tenant's sole cost and expense. This Section 5(c) shall survive Lease termination.

(d) Tenant acknowledges that the Property may be subject to ongoing Landfill Uses and Obligations and that Permitted Uses on the Property, including but not limited to the construction, operation, maintenance, decommissioning and removal of the Facility, must be conducted in conformance with all Applicable Law, including but not limited to Applicable Law in connection with Landfill Uses and Obligations.

(e) In addition to, and without waiving, all other legal and equitable remedies Tenant may have against Landlord, if at any time a change in Landlord's Landfill Uses and Obligations or in Applicable Law render the Facility unlawful or permanently inoperable, this Lease shall terminate at the option of Tenant.

(f) Tenant shall not be responsible for any increase in Landlord's cost of compliance for work pursuant to its Landfill Uses and Obligations above Landlord's cost of compliance had the Facility not been present.

(g) Tenant is Not an Owner or Operator. The Parties understand and agree that solely by virtue of Tenant's acceptance of the Lease, its entry upon the Property in accordance with the provisions of this Lease, its undertaking of Permitted Uses in accordance with the provisions of this Lease, or its performance of any other lawful act permitted to be undertaken hereunder, neither the Tenant nor any of its respective members, partners, officials, agents, contractors, employees, investors, directors, officers, successors or assigns shall be deemed:

(i) an "owner" or "operator" (as defined under Applicable Law with respect to solid or hazardous wastes or hazardous substances) of the Landfill or the Property;

(ii) to have assumed any liability or obligation for any Landfill Uses and Obligations, except as set forth herein to accommodate Landlord's Landfill Uses and Obligations; or

(iii) to have assumed any liability or obligation for materials of any type or description present on the Property as of the Effective Date or that are generated, transported, disposed of, arranged for disposal of, released, deposited, stored, or received on or within the Property by any person or entity other than Tenant, and its permitted successor, permitted assigns, agents, employees, contractors or subcontractors after the Effective Date.

(h) Tenant Not Liable. Landlord agrees that Tenant shall have no liability with respect to:

(i) the presence of environmental contamination, if any, on the Property, including investigation or remediation thereof required by a Governmental Authority, to the extent such contamination is not caused or exacerbated by Tenant or its permitted successor, permitted assigns, agents, employees, contractors or subcontractors;

(ii) notwithstanding sub-paragraph (h)(i), the presence of environmental contamination that the Landlord knew or should have known was present and failed to disclose to Tenant and which results in a release from containment (such as underground storage tanks or drums) as a result of Tenant's undertaking of a Permitted Use;

(iii) any conditions on the Property arising from or related to acts or omissions of Landlord or any other person or entity occurring prior to the commencement of the Effective Date or occurring after the Effective Date that arise from or are related to Landlord's failure to perform its duties or obligations under this Lease, Applicable Law or Landlord's Landfill Uses or Obligations;

(iv) Landlord's Landfill Uses and Obligations; or

(v) a legal or administrative action by a Government Authority or third party arising out the circumstances in sub-paragraphs (i), (ii), (iii) or (iv).

SECTION 6. LANDLORD REPRESENTATIONS; DEFINING THE LEASE AREA; CONSTRUCTING THE FACILITY; LANDLORD RESTRICTIONS.

(a) Landlord represents, covenants, and warrants that:

(i) Current and ongoing Landfill Uses and Obligations are in compliance with Applicable Law as of the Effective Date;

(ii) Construction of the Facility is consistent with and will not constitute a violation of Applicable Law related to Landfill Uses and Obligations as of the Effective date;

(iii) As of the Effective Date, Landlord is not aware of any additions or changes to its Landfill Uses and Obligations being considered by a Governmental Authority that would materially impact the Permitted Uses;

(iv) Prior to the Development and Construction Period, Landlord will disclose to Tenant all material environmental conditions and environmental contamination, if any, that are known or should be known to Landlord, including pertinent reports, correspondence, data, and other documents in the Landlord's possession as of the

Effective Date that may impact the selection of the location of the Lease Area and the Easements or any Permitted Use, including the construction and operation of the Facility;

(v) Prior to the Development and Construction Period, Landlord will disclose pertinent plans, reports, correspondence, data, and other documents in the Landlord's possession as of the Effective Date regarding the Landfill Uses and Obligations that may materially impact the selection of the location of the Lease Area and the Easements or any Permitted Use, including the construction and operation of the Facility;

(vi) Landlord will notify Tenant of any change relative to sub-paragraphs (i), (ii), (iii), (iv), or (v) and provide the pertinent plans, reports, correspondence, data, or other documents to Tenant;

(vii) Landlord shall perform all work pursuant to its Landfill Uses and Obligations in accordance with the provisions and requirements of Applicable Law. Landlord shall promptly inform Tenant of the occurrence of any event that materially and adversely affects the operation of the Facility or the performance of Landlord's obligations under this Lease (including, but not limited to, any notices of default under any third party contract and the occurrence of any event that may result in the imposition of material liability or obligations on Tenant or Landlord under Applicable Law). Landlord shall provide Tenant such other information as Tenant may reasonably request in order to review Landlord's compliance with the terms of this Lease; and

(viii) Landlord shall be solely responsible, at its sole cost and expense, and in accordance with Applicable Law, to perform all work pursuant to its Landfill Uses and Obligations at the Landfill and the Property.

(b) Subject to Landlord's Landfill Uses and Obligations, during the Development and Construction Period, Tenant may, at its discretion, determine the Facility size and the specific location of the Lease Area and the Easements on the Property by means of a survey, and such survey shall then define the Lease Area and the Easements and shall be an amendment to this Lease as a revised Exhibit B.

(c) Tenant may construct the Facility as Tenant, in its sole discretion, determines, provided such construction shall comply with Applicable Law, Landlord's Landfill Uses and Obligations and with this Lease.

(d) Tenant may remove trees as necessary within the Property to obtain solar access to the Facility, consistent with Section 3(a)(iii) (regarding the solar easement), provided that Tenant shall comply with any erosion and sediment control regulations.

(e) After Tenant determines the Facility is capable of Commercial Operations, Tenant shall notify Landlord that Facility installation is complete and shall specify the Commercial Operation Date.

(f) Landlord has no obligation to improve the Lease Area or Property to accommodate the Facility.

(g) Except as required by a Government Authority after the Effective Date with respect to a change in its Landfill Uses and Obligations, Landlord shall not:

(i) engage in activities at the Property that will materially impact the Lease Area topography or soil conditions, or construct any structures or improvements on the Lease Area, provided that operation of the Town Transfer Station which is located on the Property shall not be deemed to materially impact the Lease Area topography or soil conditions; or

(ii) install, or knowingly permit to be constructed or installed, or grow or allow to grow, on any property owned or leased by Landlord any alterations, modifications or improvements or vegetation on or to such property which would interfere with or block the Facility's access to sunlight.

(h) Landlord shall not enter the Lease Area without Tenant's consent, such consent not to be unreasonably withheld, conditioned or delayed. Subject to paragraph Section 6(i), Landlord or its designees shall have the right to enter upon the Property and, to the extent necessary for the purposes described below, disrupt or temporarily remove portions of the Facility, subject to and in accordance with the following:

(i) At Landlord's request, Tenant shall move or remove components of the Facility whenever Landlord is required by a Governmental Authority or change in Applicable Law to perform work, or to make necessary repairs, pursuant to Landlord's Landfill Uses and Obligations;

(ii) In the event of an emergency condition which, in the reasonable judgement of Landlord, requires Landlord to promptly perform work pursuant to Landlord's Landfill Uses and Obligations, Landlord shall give as much prior notice as practicable to Tenant prior to conducting the work, and, in the event such work requires movement or removal of components of the Facility, Landlord shall first provide notice to Tenant and afford Tenant the opportunity to perform such work. In the event Tenant does not elect to perform such work, Landlord may move or remove such components of the Facility, provided Landlord shall use best efforts to have such work performed by a qualified expert consistent with best industry practices. Landlord shall promptly cause such components to be reinstalled upon completion of the work, or in the event such reinstallation is not possible, to move or install the altered components of the Facility to another area within the Lease Area or Easements, as the case may be.; and

(iii) Except in the event of an emergency condition, Landlord shall provide Tenant with at least two weeks prior written notice prior to the commencement of work in the Lease Area or Easements and further agrees to schedule and perform the work in such a manner as to minimize interference with the Facility.

(iv) Notwithstanding the above, the parties acknowledge that the Town has or may have a Building Inspector, Fire Inspector, Zoning Administrator or Code Enforcement Officer, by whatever title named, who may be required or have need to inspect the Lease Area and such inspections are not limited or restricted by this Ground Lease.

(i) Landlord shall be obligated to pay or reimburse Tenant for the cost of moving, removing, storing, and reinstalling components of the Facility to allow Landlord to perform the work set forth in Section 6(h) (i) through (iii). Tenant reserves all rights and claims for any damages or costs arising from or related to such work.

(j) Landlord shall be solely responsible for any and all costs and expenses related to any damage, repair, replacement, modification or shutdown of any part of the Facility resulting from Landfill settlement, subsidence or shifting to the extent such condition arises out of Landlord's gross negligence or willful misconduct.

(k) Landlord shall have no right or claim to any products, output, incentives, or credits created by or arising out of the Facility, including but not limited to electricity, Environmental Attributes, Tax Attributes, other tax incentives or payments, any incentives or other payments offered by any Governmental Authority, and/or payments from the LDC or other entity with respect to the Facility itself or any output therefrom. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Landlord shall not submit any statements for publication regarding the Facility without the prior written approval of Tenant. The provisions of this subsection are subject to the rights and obligations pursuant to a Credit Purchase and Sale Agreement which is being executed by the parties simultaneously herewith.

- (1) After Tenant determines the Lease Area pursuant to Section 6(a), before Landlord may sell the Lease Area to a third party, Landlord shall, in writing, first offer to sell the Lease Area to Tenant on the same terms and conditions as are offered to or by the third party. Tenant shall have thirty (30) Business Days from the date of Landlord's notice to Tenant during which to accept the terms of the offer. If Tenant accepts the terms of the offer, the Parties shall use good faith efforts to consummate the transaction within sixty (60) days from the date of Tenant's acceptance, and shall negotiate any remaining terms in good faith and to a commercially reasonable standard.
- (2) If Tenant does not accept the offer within the 30-day period, Landlord may accept the third-party's offer on the terms presented to Tenant. If Landlord does not close the sale to the third party within ninety (90) days of the termination of Tenant's 30-day period, or if the material terms of the offer are amended, Landlord's right to sell the Lease Area to the third party shall expire and Tenant's rights and the procedure described in this subsection (k) shall again apply.

SECTION 7. RENT PAYMENTS. Tenant shall pay Rent to Landlord as follows:

(a) Development and Construction Period. No Rent shall be due for the Development and Construction Period.

(b) Operations Period.

During the Operations Period, Tenant shall pay to Landlord Rent of Three Thousand Five Hundred Dollars (\$3,500) per MW (DC) of Photovoltaic Generating Facility capacity per Operating Year, pro-rated for partial MWs.

(ii) Rent shall increase annually for years two through five of the term by a factor of 1% per year ("Rent Escalator"). As of every fifth anniversary of the Commercial Operation Date the Rent Escalator shall be adjusted for the ensuing five year period in accordance with Exhibit D, attached hereto.

(iii) Rent for each Operating Year, including any Operations Period extensions, shall be paid quarterly, in arrears.

(c) Decommissioning Period. No Rent shall be due for the Decommissioning Period other than amounts due prior to the Decommissioning Period.

(d) Payment Method. Rent may be paid by check or wire transfer. Upon request by Tenant, Landlord shall provide Tenant with account information to which wire transfers may be made.

SECTION 8. TAXES

(a) Landlord shall be responsible for all taxes related to the Property other than Tenant's obligations stated in Section 8(b) and 8(c).

(b) Tenant shall be responsible for the following taxes from the Commercial Operation Date through the end of the Decommissioning Period:

(i) any increase in real estate taxes assessed against the land area of the Facility footprint on the Lease Area that are solely attributable to the Facility; and

(ii) any penalties or increase in real estate taxes assessed against the land area of the Facility footprint on the Lease Area resulting from the loss of an agricultural assessment solely attributable to converting such land from agricultural use to a non-agricultural use.

(c) Tenant shall pay all taxes for which Tenant is directly billed on or before the date such amounts are due, subject however to the right of Tenant to contest taxes in accordance with this Lease and Applicable Law. Tenant shall pay Landlord, within ten (10) business days after

Tenant's receipt of the applicable invoice from Landlord, the amount of such taxes for which Tenant is responsible hereunder and which have not been billed directly to Tenant. Landlord will submit copies of tax bills or notices of assessments, appraisals or statements applicable to the Facility to Tenant promptly upon receipt thereof and, to the extent Landlord pays the same directly to the taxing authorities, Landlord will promptly provide evidence of such payment to Tenant.

(d) Each Party may contest in good faith any tax assessments or payments, provided that all payments are made when due and such contest (or appeal, as the case may be) complies with New York law. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) If Tenant fails to pay directly or reimburse Landlord for taxes for which Tenant is responsible hereunder, Landlord may pay the same and in such event shall be entitled to recover such amount from Tenant together with interest thereon at a rate equal to the lesser of (i) one and one-half percent (1 ½ %) per month (eighteen percent (18%) per annum) or (ii) the highest rate allowed under Applicable Law.

(f) If Landlord fails to pay any taxes, judgments or liens that become a lien upon Tenant's interest in the Lease Area or improvements thereon for which Landlord is responsible hereunder, Tenant may pay such amounts and in such event shall be entitled to recover such paid amount from Landlord, together with interest thereon at rate equal to the lesser of (i) one and one-half percent (1 ½ %) per month (eighteen percent (18%) per annum) or (ii) the highest rate allowed under Applicable Law.

SECTION 9. TITLE AND LIENS.

(a) Landlord represents and warrants as of the Effective Date that Landlord has fee simple title to the Property subject to no liens, easements, options or other encumbrances other than the Existing Encumbrances.

(b) After the Effective Date, in addition to Existing Encumbrances, and any refinancing of such Existing Encumbrances, Landlord may grant a mortgage on all or part of its interest in the Property if (i) such mortgage is subject to this Lease; and (ii) the mortgagee enters into an agreement, on terms and conditions reasonably acceptable to Tenant, recognizing the priority of Tenant's interest in the Property pursuant to this Lease. Tenant shall be permitted to record any such agreement, whether related to an Existing Encumbrance or a mortgage arising after the Effective Date, in the County land records.

(c) Landlord shall not allow any encumbrances against the Property other than Permitted Encumbrances. Landlord shall promptly pay all obligations secured by encumbrances against the Property (whether or not such encumbrances are Permitted Encumbrances) and shall not allow any uncured default to occur under obligations secured by encumbrances against the

Property. In lieu of paying amounts secured by encumbrances which are not Permitted Encumbrances, Landlord may provide a surety bond or other adequate security in accordance with applicable law and Tenant's reasonable requirements.

(d) At Tenant's request, Landlord shall obtain from holders of Permitted Encumbrances such subordinations or non-disturbance agreements as Tenant may reasonably request to protect and secure Tenant's interest in the Property or for or in connection with a financing or other financial arrangement related to the Property and/or the Facility. Such agreements shall include undertakings by the holders of Permitted Encumbrances (i) to notify Tenant of any defaults by Landlord in performing its obligations secured by the Permitted Encumbrances; and (ii) to provide Tenant a reasonable period of time after Tenant's receipt of notice from the holder of the Permitted Encumbrance, not less than thirty (30) days in the event of a "Payment Default" (as defined below), and sixty (60) days in event of a "Non-Payment Default" (as defined below), to cure the default on behalf of Landlord, before the holder of the Permitted Encumbrance can exercise any rights to foreclose upon or otherwise take ownership of the Property. If the default cannot reasonably be cured within a sixty-day period then, provided Tenant has promptly commenced and is diligently performing actions to cure the default, Tenant shall have such period of time as is reasonably necessary to cure the default, but not more than one hundred and twenty (120) days.

(e) All equipment and structures included within the Facility shall, to the extent permitted by law, be personal property and not real property, and title to the Facility shall be in Tenant or its mortgagees and assigns. Neither Landlord nor anyone claiming through Landlord may file liens on the Facility or Tenant's interest in the Property, except to the extent that a Default under the terms of this Lease exists and remains uncured after any notice and cure period required herein.

(f) Neither Tenant nor anyone claiming through Tenant (including contractors hired by Tenant) shall have the right to file liens on the Property, other than on Tenant's leasehold rights arising under this Lease.

SECTION 10. FILINGS.

Landlord hereby acknowledges Tenant intends to develop, construct and operate the Facility on the Lease Area. Tenant is hereby authorized, in the name of Landlord, Tenant or both, as Tenant may deem to be necessary or appropriate, to file with such federal, state and local authorities and the LDC as Tenant deems appropriate (i) one or more applications to obtain any zoning relief regarding the Property or portions thereof as may be necessary and/or desirable to develop, construct and operate the Facility on the Lease Area; (ii) one or more applications to obtain construction, use or occupancy permits for the Facility or any portion thereof, and (iii) one or more applications with the LDC to obtain approval to interconnect the Facility with the LDC's distribution system. Landlord shall cooperate in good faith with Tenant and shall execute any such applications promptly upon Tenant's request, and shall not oppose or interfere with Tenant in such regard. Landlord is not obligated to incur expense in connection with such efforts.

SECTION 11. INSURANCE AND INDEMNITY.

(a) Each party shall maintain appropriate insurance for its respective interests in, and activities on, the Property, and shall provide certificates of insurance to the other Party evidencing such coverage promptly following the request. Tenant shall be entitled to all proceeds of any insurance policy that Tenant maintains with respect to the Facility.

(b) To the fullest extent permitted by law, each Party (the “Indemnifying Party”) shall indemnify, defend and hold the other Party, its shareholders, partners, members, directors, officers, employees, agents and contractors (the “Indemnified Persons”), harmless from and against all Losses incurred by the Indemnified Persons to the extent arising from, or out of, any claim for, or arising out of, any injury to or death of any person or loss or damage to property to the extent arising out of the Indemnifying Party’s, its employees’ and agents’ negligence, willful misconduct, or unlawful conduct. The Indemnifying Party shall not be obligated to indemnify any Indemnified Person for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Indemnified Person or for statutory violation of, or punitive damages against, any Indemnified Person except to the extent the statutory violation or punitive damages are caused by or result from the acts or omissions of the Indemnifying Party or of any of the Indemnifying Party’s contractors, subcontractors, sub-subcontractors, materialmen, or agents of any tier or their respective employees. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to a Party or person described in this Agreement.

(c) Landlord shall indemnify, defend and hold harmless the Tenant from and against any and all Losses arising from or out of: (i) a breach of Landlord’s Representations and Warranties in Section 6(a) of this Lease; (ii) Sections 6(g), (i), and (j) of this Lease; (iii) the circumstances described in Section 5(h) of this Lease; and (iv) any pollution or contamination that violates any local, state or federal environmental protection law, policy or regulation, that existed on or before the Effective Date or that is caused by the Landlord or any of its employees, invitees, agents or contractors following the Effective Date. Subject to the limitations herein, Tenant shall indemnify, defend and hold harmless Landlord from and against any and all Losses arising from or out of any pollution or contamination that violates any local, state or federal environmental protection law, policy or regulation, that is caused or exacerbated by the Tenant or any of its employees, invitees, agents or contractors following the Effective Date.

(d) This Section 11 shall survive the termination of the Lease.

SECTION 12. MAINTENANCE, SECURITY AND UTILITIES.

(a) Maintenance. The Lease Area and all Easements shall be maintained by Tenant at its own expense.

(b) Security. Tenant is responsible for Lease Area security.

(c) Utilities. Tenant is responsible for utilities furnished to the Lease Area and Facility and used by Tenant throughout the Term hereof, and for all other costs and expenses in connection with the Facility use, operation, and maintenance.

SECTION 13. CONDEMNATION.

(a) If, during the Term, any competent authority for any public or quasi-public purpose (“Condemnor”) seeks to take or condemn all or any portion of the Lease Area, Landlord and Tenant may use all reasonable and diligent efforts, each at its own expense, to contest such taking. In the event either party seeks to contest any such taking the other party agrees to cooperate in any such proceeding provided such party is not obligated to incur any expense in connection with such efforts.

(b) If, at any time during the Term, any Condemnor shall condemn all or substantially all of the Lease Area, or the Facility, so that the purposes of this Lease are frustrated, then the interests and obligations of Tenant under this Lease in or affecting the Lease Area shall cease and terminate upon the earlier of (i) the date that the Condemnor takes possession of the Lease Area or the Facility, (ii) the date that Tenant is, in its sole judgment, no longer able or permitted to operate the Facility on the Lease Area in a commercially viable manner, or (iii) the date title vests in the Condemnor. Tenant shall continue to pay all amounts payable hereunder to Landlord until the earlier of such dates at which time Landlord and Tenant shall be relieved of any and all further obligations and conditions to each other under this Lease, except for indemnity obligations, which shall survive any termination thereunder.

(c) If, at any time during the Term any Condemnor shall condemn a portion, but not all or substantially all of the Facility or the Lease Area, then the interest and obligations of Tenant under this Lease as to that portion of the Facility or the Lease Area so taken shall cease and terminate upon the earlier of, (i) the date that the Condemnor takes possession of such portion of the Facility or the Lease Area, (ii) the date that Tenant, in its sole judgment, is no longer able or permitted to operate the Facility on the Lease Area, or any portion thereof, in a commercially viable manner, or (iii) the date title vests in the Condemnor; and, unless this Lease is terminated as herein provided, this Lease shall continue in full force and effect as to the remainder of the Facility or the Lease Area. If the Lease Area becomes insufficient or unsuitable for Tenant’s purposes hereunder, as determined by Tenant in its sole discretion, then Tenant may terminate this Lease in accordance with this Section 13 as to the portion of the Lease Area to which Tenant continues to hold the rights, at which time Landlord and Tenant shall be relieved of any further obligations and duties to each other under this Lease, except for indemnity obligations and Tenant’s decommissioning obligations under Section 18, which shall survive any termination hereunder.

(d) For any taking covered by Sections 13(b) or 13(c), all sums, including damages and interest, awarded shall be paid and distributed to Tenant and Landlord in accordance with their respective interests under this Lease. In determining their respective interests:

(i) Landlord’s interest shall be based on the value of Landlord’s interest in the Lease Area (but excluding any of Tenant’s interest in the Facility or any other of Tenant’s improvements on the Lease Area), taking into account the amounts paid or due to be paid by Tenant hereunder and all other terms and provisions of this Lease; and

(ii) Tenant's interest of shall be based on the value of Tenant's interest in the Lease Area (determined at the time of the taking), including the value of the Facility and Tenant's other improvements for the Term, plus any cost or loss that Tenant may sustain in the removal and/or relocation of any Facility; provided, however, that in each case the value of the respective interests of Landlord and Tenant shall be calculated as if no taking covered by Sections 13(b) or 13(c) were to occur.

SECTION 14. ASSIGNMENT.

(a) This Lease and rights hereunder may be assigned by Tenant

(i) in Tenant's sole discretion,

A. to any entity in which Tenant, or an affiliate thereof, has a majority ownership interest;

B. to any entity as security for or in connection with a financing or other financial arrangement related to the Lease Area and/or the Facility, as set forth in Section 15.

(b) subject to Landlord's approval and consent, such consent not to be unreasonably withheld, conditioned or delayed, to any other person or entity who assumes all of Tenants rights and obligations hereunder, provided however that the effectiveness of any such assignment shall be conditioned on the Tenant not being then in Default. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed by the assignee.

(c) Upon any assignment pursuant to this Section 14, Tenant shall provide to Landlord current information regarding Tenant's and all Financing Parties' addresses and the term "Tenant" in this Lease shall refer to the entity that was assigned the rights and obligations of Tenant hereunder.

SECTION 15. FINANCING.

(a) Tenant may encumber its interest in the Lease Area and in the Facility by mortgage, lease, sale and leaseback, deed of trust or similar instrument or instruments and by security agreement, fixture filing and financing statements or similar instrument or instruments in favor of any person or persons providing all or a portion of the financing for the Facility or any person or persons providing a refinancing of any such financing or any trustee for such person or persons (each, a "Financing Party").

(b) If Tenant's rights or property are foreclosed upon or seized, or if a Financing Party exercises any other right under a security agreement granted by Tenant to that Financing Party, Landlord shall permit such Financing Party to exercise any and all Tenant rights hereunder, so long as there are no existing uncured Defaults. Landlord shall execute any document reasonably requested by any Financing Party to evidence and give effect to the

provisions of this Section 15(b), subject only to the condition precedent that no Tenant Payment Default exists.

(c) At Tenant's request, Landlord shall amend this Lease to include any provision reasonably be requested by an existing or proposed Financing Party, provided such amendment shall not impair Landlord's rights under this Lease.

(d) Landlord shall, within ten (10) days after Tenant's written request, execute and deliver to Tenant (or to such party or parties as Tenant shall designate, including a Financing Party) the following written statements:

(i) (1) certifying whether this Lease is in full force and effect (or modified and stating the modification), (2) stating the dates on which amounts due to Landlord have been paid, (3) stating that there are no known defaults existing at the time of execution of the statement, or that defaults exist and the nature of such defaults, and (4) stating that, as of the date of such estoppel certificate, there are no disputes or proceedings under this Lease between Landlord and Tenant or, if any such dispute exists, describe the nature of such disputes or proceedings;

(ii) (1) recognizing a particular entity as a Financing Party under this Agreement and (2) agreeing to accord to such entity all the rights and privileges of a Financing Party hereunder.

SECTION 16. RECORDATION, CONFIDENTIALITY.

(a) This Lease shall not be recorded, but the Parties shall, at Tenant's expense, execute and record with the County an appropriate notice of lease ("Notice of Lease" or "Memorandum of Lease"). Also, a Financing Party may record Tenant's mortgage of this Lease to the Financing Party, and may record subordinations and/or non-disturbance agreements obtained from holders of Permitted Encumbrances.

(b) The parties acknowledge that Landlord is subject to the New York State Open Meetings Law and Freedom of Information Law.

SECTION 17. DEFAULT AND REMEDIES.

(a) If Tenant fails to perform any of Tenant's material obligations under this Lease and such failure remains uncured following the required notice and cure periods as required in Section 17(c) (a "Default"), Landlord may terminate this Lease by notice to Tenant and exercise any other remedies provided in this Lease or under Applicable Law. A Default may be either a Payment Default or a Non-Payment Default.

(b) Landlord shall simultaneously notify in writing Tenant and all Tenant Financing Parties who have given advance notice of their interest in this Lease to Landlord, of any failure by Tenant to perform any Tenant obligations under this Lease, which notice shall be sent

according to Section 20 and shall set forth in reasonable detail the facts pertaining to such failure and specify a reasonable method of cure.

(c) Before Landlord exercises any rights or remedies against Tenant as a result of a Tenant Default, Landlord shall give Tenant and each Financing Party (i) sixty (60) days' notice of and the opportunity to cure any Tenant Payment Default, (ii) ninety (90) days' notice of and the opportunity to cure any Tenant Non-Payment Default, and (iii) a reasonable further opportunity to cure a Tenant Non-Payment Default, in which case Tenant, or the Financing Party on the Tenant's behalf, shall notify Landlord of the anticipated date for curing of the Non-Payment Default and shall begin, and shall continue to diligently undertake, the cure within the 90-day period, weather permitting.

(d) Tenant and any Financing Party may cure any Payment Default by paying all then overdue payments in full together with interest thereon at the rate of the lower of one and one half percent (1 ½%) per month or the maximum amount then allowed by law.

(e) If Landlord fails to perform any of its obligations hereunder, including failure to perform with respect to any obligations secured by encumbrances against the Property, Tenant may offset against any amounts owing to Landlord hereunder any amounts paid by Tenant to cure such non-performance by Landlord together with interest thereon at the rate of the lower of one and one-half percent (1½%) per month or the maximum amount then allowed by law and exercise any other remedies available under this Lease or Applicable Law.

SECTION 18. FORCE MAJEURE. If performance of this Lease or of any obligation hereunder (other than an obligation to pay any Rent) is prevented or substantially restricted or interfered with by reason of an event of "Force Majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected party shall use reasonable efforts to avoid or remove such causes of nonperformance, and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure may include the following acts or events: (i) Acts of God or acts of Providence including hurricanes, floods, washouts, lightning, earthquakes, storm warnings and any other adverse weather conditions which directly result in a party's inability to perform its obligations, (ii) acts of civil disorder including acts of sabotage, acts of war, lockouts, insurrection, riot, mass protests or demonstrations, threats of any of the foregoing, and police action in connection with or in reaction to any such acts of civil disorder, when any such acts of civil disorder directly results in a party's inability to perform its obligations, and (iii) failures resulting from fires, washouts, mechanical breakdowns of or necessities for making repairs or alterations to transformers, power lines, switching equipment, inverters, machinery, cables, meters or any of the equipment therein or thereon, when any such failure directly results in a Party's inability to perform its obligations.

SECTION 19. NOTICES. Notices under this Lease shall be sent to the addresses set forth below:

LANDLORD: Supervisor
Town of Marlborough
21 Milton Turnpike, Suite 200
Milton, New York 12547

TENANT:

Nexamp Solar, LLC
101 Summer St, Third Floor, Boston, MA 02109
Attn:
Email:

Notices shall be deemed received if sent by certified mail (return receipt requested), courier or nationally recognized overnight delivery service to last known address of the intended recipient. Notices may also be sent by email for which the sending Party receives an affirmative confirmation that the email message has been completely transmitted without error (of which auto-replies are insufficient). Email messages received on any day that is not a business day, or after 5:00 p.m. local time on a business day, shall be deemed to have been delivered on the next business day. A Party may change its address for delivery of notices hereunder by notice given in accordance with this Section. Failure of the Tenant to notify the Landlord of an address change for it or any Financing Party shall excuse the Landlord from complying with any notice obligation herein to such changed addresses, provided however that the Landlord will in no event be excused from providing notices required herein to all addresses that Landlord has notice of. Notices will be deemed given upon receipt or upon the failure to accept delivery.

SECTION 20. NO PARTNERSHIP. Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Tenant by reason of this Lease.

SECTION 21. DISPUTE RESOLUTION.

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

(b) Mediation. If, after such negotiation in accordance with Section 21(a), the Dispute remains unresolved, a Party may require that a non-binding mediation take place. In such

mediation, representatives of the Parties with authority to resolve the dispute shall meet with a mediator whom they choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the American Arbitration Association (the “AAA”) to appoint a mediator. The mediator’s fee and expenses shall be paid equally by each involved Party.

(c) Arbitration of Disputes.

(i) Rules of Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Sections 21(a) or 21(b) shall (except as provided in Section 21(c)(iii)) be settled by binding arbitration between the Parties conducted in Ulster County, New York, or such other location mutually agreeable to the Parties, and in accordance with the AAA Commercial Arbitration Rules in effect on the date that a Party gives notice of its demand for arbitration. The award rendered by the arbitrator(s) shall be final and binding on the parties and may be entered and enforced in any court having jurisdiction thereof.

(ii) Expenses. Unless otherwise ordered by the arbitrator, each Party shall bear its own expenses and proportionate cost of the arbitration panel. Payments of the arbitrator’s costs shall be made on a monthly basis prior to any award.

(iii) Exceptions to Arbitration. The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction located in New York State to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to enforce an award of an arbitrator or otherwise to collect payments not subject to bonafide dispute; or (iii) claims involving third parties who have not agreed to participate in the arbitration of the Dispute.

(iv) Survival of Arbitration Provisions. The provisions of this Section 21 shall survive any termination of this Agreement and shall apply (except as provided herein) to any Disputes arising out of this Agreement.

SECTION 22. MISCELLANEOUS PROVISIONS.

(a) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the state of New York.

(b) Rules of Interpretation. References to sections are, unless the context otherwise requires, references to sections of this Lease. The words “hereto”, “hereof” and “hereunder” shall refer to this Lease as a whole and not to any particular provision of this Lease. The word “person” shall include individuals; partnerships; corporate bodies (including to corporations, limited partnerships and limited liability companies); non-profit corporations or associations;

governmental bodies and agencies; and regulated utilities. The word “including” shall be deemed to be followed by the words “without limitation”.

(c) Entire Agreement/Amendment. This Lease contains the entire agreement of the Parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the Parties obligated under the amendment and notice thereof is registered with the County.

(d) Severability. If any non-material part of this Lease is held to be unenforceable, the rest of the Lease will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Lease to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, the matter shall be resolved under Section 21 (regarding dispute resolution) and an arbitrator may reform the Agreement as the arbitrator deems just and equitable in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

(e) Waiver. The failure of either Party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that Party’s right to subsequently enforce and compel strict compliance with every provision of this Lease.

(f) Binding Effect. The provisions of this Lease shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

(g) No Assurance as to Development. Tenant makes no representations, warranties, commitments or guarantees of any kind as to the likelihood of Tenant successfully developing, financing and/or constructing the Facility on the Lease Area.

(h) Cooperation. The Parties acknowledge that the performance of each Party’s obligations under this Lease may often require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Lease specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party as required, in its reasonable discretion, and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder. From time to time and at any time at and after the execution of this Lease, each Party shall execute, acknowledge and deliver such documents, and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Lease that may be reasonably requested by the other for the purpose of effecting or confirming (but not altering or expanding) any of the transactions contemplated by this Lease. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 22(h).

(i) Business Days. Any payment or other obligation which is due to be performed on or before a day which is not a business day in the state of New York may be performed on or before the next business day following the date provided herein.

(j) Counterparts. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the Parties.

(Signatures appear on the following page.)

IN WITNESS WHEREOF, the Parties entered into this Lease as of the Effective Date.

TENANT

LANDLORD

Nexamp Solar, LLC

Town of Marlborough

By:

By: _____

By: _____

Name: _____

Title: Authorized Officer

Name: Alphonso Lanzetta

Title: Supervisor

GLOSSARY OF TERMS

As used herein, the following terms shall have the meanings set forth beside them:

“Applicable Law” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein.

“Commercial Operation” shall occur for the Facility when (i) Tenant has obtained all necessary licenses, permits and approvals under Applicable Law for installing and operating the Facility, (ii) the Facility has been connected to the LDC’s electricity distribution system, and (iii) the Facility is ready and able to generate and supply electricity to the LDC electricity distribution system.

“Commercial Operation Date” means the date Tenant receives authority to interconnect the Facility from the LDC, notice of which shall be given according to Section 6(d).

“Condemnor” is defined in Section 13(a).

“County” means the county within which the Facility is located.

“Decommission” or “Decommissioning”: means performing the activities described in Section 5(c).

“Decommissioning Period” is defined in Section 4(a)(iii).

“Default” is defined in Section 17(a).

“Development and Construction Period” is defined in Section 4(a)(i).

“Dispute” is defined in Section 21(b).

“Easement(s)” shall mean those areas of land described in Section 3, as detailed in Exhibit B, until during the Development and Construction Period when Tenant shall determine the boundaries of the easements by means of a survey, and such survey shall then define the Lease Area as an amendment to this Lease as a revised Exhibit B.

“Environmental Attributes” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes.

“Existing Encumbrances” mean those interests in the Lease Area set forth in Exhibit C attached hereto.

“Facility” means the solar powered electric generating facility, any electric energy storage facility, and all related equipment and structures, including inverters, transformers and facilities for interconnection with the LDC, to be installed by Tenant on the Lease Area in accordance with this Lease.

“Financing Party” is defined in Section 15(a).

“Force Majeure” is defined in Section 18.

“Governmental Authority” means any international, national, federal, state, municipal, county, regional or local government, administrative, judicial or regulatory entity, and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Indemnified Persons” is defined in Section 11(b).

“Indemnifying Party” is defined in Section 11(b).

“Landfill” is defined in the Preamble.

“Landfill Uses and Obligations” refer to the ownership, operation, monitoring, maintenance, closure, reporting, permit duties and other obligations required by a Government Authority under Applicable Law, and all other activities and obligations during the active use, closure, and post-closure periods in connection with the Landfill.

“Landlord” is defined in the Preamble.

“LDC” means the local electric power distribution company.

“Lease” is defined in the Preamble.

“Lease Area” means the Property, unless during the Development and Construction Period Tenant determines the boundaries of the final Lease Area, by means of a survey, which survey shall then define the Lease Area as an amendment to this Lease as a revised Exhibit B.

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

“Memorandum of Lease” is defined in Section 16(a).

“Non-Payment Default” means a Default due to reasons other than failure to make timely payments required under the terms of the Lease.

“Notice of Lease” is defined in Section 16(a).

“Operating Year” means a twelve month period commencing on an anniversary of the Commercial Operation Date (or with respect to the first Operating Year, commencing on the Commercial Operation Date) and ending on the date immediately preceding the next anniversary of the Commercial Operation Date.

“Operations Period” is defined in Section 4(a)(ii).

“Option Agreement” is defined in the Preamble.

“Party” is defined in the Preamble.

“Payment Default” means a failure to make timely payments required under the terms of the Lease.

“Permitted Encumbrances” mean the Existing Encumbrances and any additional mortgages granted by Landlord in accordance with Section 9(b) hereof.

“Permitted Use” means the use of the Lease Area i) to develop, install, construct, interconnect, maintain, operate, repair, replace and decommission the Facility, ii) to produce, deliver, store and sell electricity produced by the Facility and associated Environmental Attributes and Tax Attributes and iii) to store such equipment, supplies, tools and replacement parts as reasonably required to accomplish (i) and (ii) above, including the construction of a single story storage shed. Permitted Uses are not Landfill Uses and Obligations.

“Property” means the real property located at 20 Baileys Gap Road, Marlborough, New York, containing approximately 82.33 acres, as more particularly described in Exhibit A.

“Renewable Energy Certificate” or “REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy generating facility.

“Rent” means the payments to be made in accordance with Section 7 hereof.

“Tax Attributes” means investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and/or operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation). Tax Attributes do not include Environmental Attributes.

“Tenant” is defined in the Preamble.

“Term” means all of the Development and Construction Period, the Operations Period, and the Decommissioning Period, as such periods are described in Section 4.

EXHIBIT A

PROPERTY DESCRIPTION

- The Property means the real property located at 20 Baileys Gap Road, Marlborough, New York, containing approximately 82.33 acres, which is the property conveyed to Landlord by deed dated April 6, 1973 and recorded in the Ulster County Clerk's office on April 6, 1973 in Liber 1296 of Deeds at page 813.

EXHIBIT B LEASE AREA AND EASEMENTS DESCRIPTION

Lease Area:

The Lease Area shall mean the Property unless during the Development and Construction Period Tenant determines the boundaries of the final Lease Area by means of a survey, which survey shall then define the Lease Area and shall be an amendment to this Lease as a revised Exhibit B.

Easements:

The Easements shall mean those areas of land described in Section 3 of the Lease. During the Development and Construction Period the Easements boundaries shall be determined according to this Lease by means of a survey, and such survey shall then define the Easements and shall be an amendment to this Lease as a revised Exhibit B.

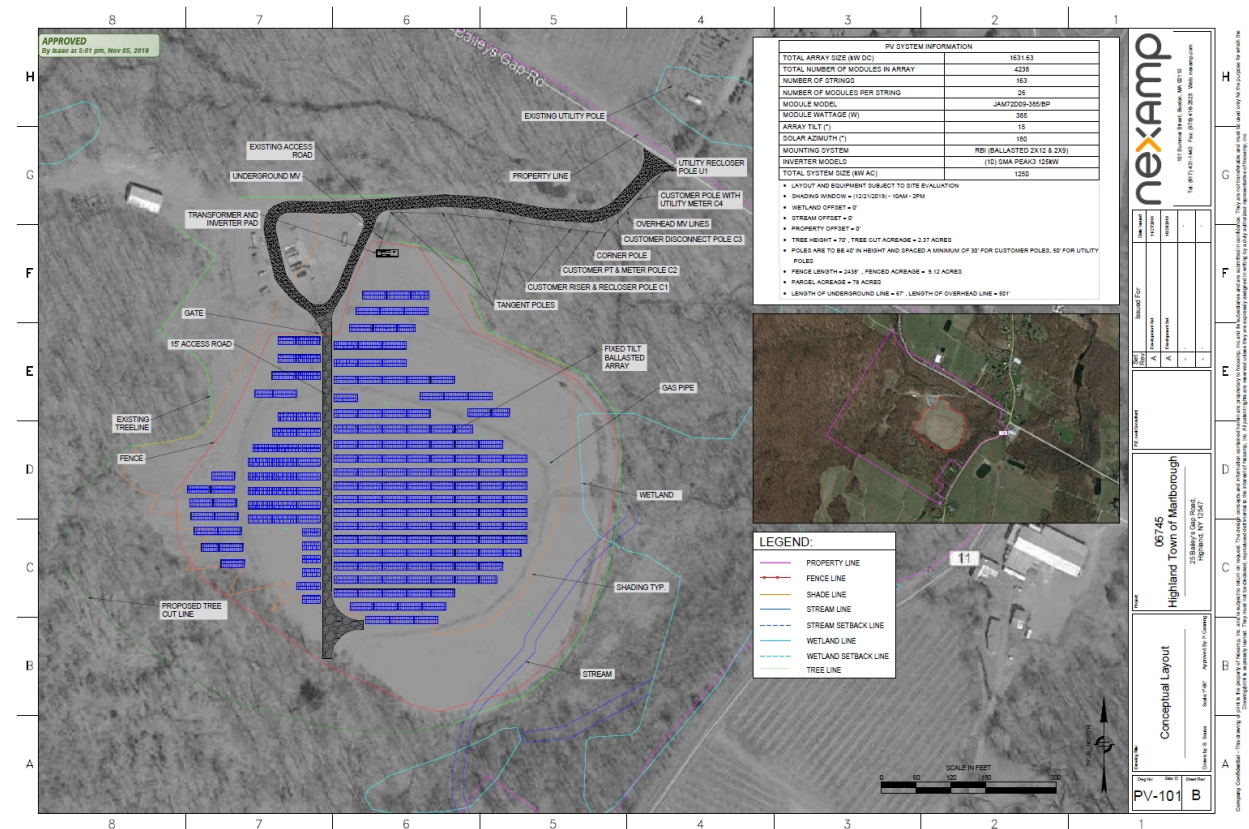


EXHIBIT C
EXISTING ENCUMBRANCES

NONE.

EXHIBIT D

CPI ADJUSTMENT

On every five year anniversary date of the term, including any renewal term, the Rent Escalator shall be adjusted for the following five years of the term, including any renewal term, to be the greater of (i) Current CPI-U on each such fifth anniversary date or (ii) 1%. "Current CPI-U" shall mean the CPI-U last officially published prior to the last day of the current year of the lease term.

- i. As used herein, "CPI-U" shall mean Consumer Price Index for All Urban Consumers for New York, All Items (base 1982-84 = 100) published by the Bureau of Labor Statistics, United States Department of Labor. The CPI-U used for rent adjustments shall be the CPI-U last officially published prior to the last day of each year of the lease term (initial or renewed), as applicable, whether such CPI-U has been published on a quarterly, semi-annual, annual, monthly or other basis.
- ii. If the CPI-U is no longer officially published at the time of rental adjustments, such index will nevertheless be used for adjustment of Rent by the use of conversion tables supplied by the Bureau of Labor Statistics, U.S. Department of Labor.
- iii. If official publication of the CPI-U number that would otherwise be used pursuant to this Lease has been delayed and not published as of the first day of the year for which the adjusted Rent is being determined, then, in the interim, until such CPI-U number is officially published, Lessee shall continue to pay the Rent as paid in the preceding year. When such CPI-U number is officially published, the determination shall be made as though such CPI-U had been officially published as of the first day of such year and the adjusted Rent so determined shall be applied retroactively and prospectively for the remainder of such year of the lease term.
- iv. If the applicable CPI-U is discontinued by the Bureau of Labor Statistics, or any successor thereto, and not replaced by any substantially similar Index which is convertible to the CPI-U, 1982-84 = 100, through the use of conversion tables, then any increase in the Rent for a succeeding year of the Lease term shall be renegotiated by the parties during the thirty (30) days immediately preceding expiration of such year.
- v. If the parties are unable to agree upon the amount of any such increase, then such increase shall be determined by arbitration. Each party will appoint an M.A.I. appraiser with at least ten (10) years active experience appraising real estate in the locality where the Premises are located to determine the fair market rental value of the Premises. If such appraisers are unable to agree upon the fair market rental value of the Premises, they shall select a third M.A.I. appraiser with at least ten (10) years active experience appraising real estate in such area, and a decision of the majority of them as to the fair market rental value of the Premises shall be binding on the parties in the absence of fraud or manifest error. If the fair market rental value determined by this appraisal method exceeds the current Rent, such fair market rental value shall be the Rent for the succeeding year only; if not, the Rent then being paid shall be the Rent for such succeeding year.