

OPTION AND GROUND LEASE

This Option and Ground Lease (the “Lease”) is made and entered into as of Sep 8, 2020 (the “Option Effective Date”) by and between **Larry Bugbee** (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 Wilson Hill Rd with the Tax Parcel ID 26.-1-12.21/1 in the Town of Hoosick, New York, as more particularly described in Exhibit A attached hereto (the “Property”); and

WHEREAS, Landlord is willing to lease all or a portion of the Property (the Lease Area, as defined below) to Tenant, and Tenant is willing to lease the Lease Area from Landlord, for the Permitted Use (defined below).

Exhibits:

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

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. OPTION TO LEASE.

(a) **Grant.** Landlord hereby grants to Tenant the exclusive right and option (the “Option”) to lease, in accordance with the terms and conditions set forth herein, the Lease Area, and to acquire associated easements, as more specifically described in Exhibit B attached hereto, in order to install, operate and maintain the Facility thereon.

(b) **Option Period.** The Option Period shall begin on the Option Effective Date and will terminate at 11:59 p.m. on the one-hundred eightieth (180th) day after the Option Effective Date (the “Option Period”).

(c) **Option Payment.** Tenant shall pay Five Hundred Dollars (\$500) to Landlord upon signing this Lease.

(d) **Exercising the Option.** Tenant may exercise the Option in one of two ways: (i) if Tenant does not terminate the Option within the Option Period, the Option shall automatically be exercised at 11:58 p.m. on the last day of the Option Period; or (ii) Tenant may exercise the Option at any time during the Option Period by providing written notice to Landlord. The day after the Option is exercised will be the first day of the Lease Term (the “Lease Effective Date”).

(e) Assigning the Option. Tenant may sell, assign, or transfer the Option, together with Tenant's other rights hereunder,

- (i) at any time to any Tenant affiliate or subsidiary or to any entity as security for or in connection with a financing or other financial arrangement related to the Property and/or the Facility; and
- (ii) subject to Landlord's approval and consent, such consent not to be unreasonably conditioned, withheld or delayed, to any other person or entity who assumes all of Tenant's rights and obligations hereunder, provided however that the effectiveness of any such assignment shall be conditioned on Tenant not being in default of this agreement.

(f) Changes in Property during Option Period. During the Option Period or any extension thereof, Landlord shall not initiate or consent to any change in the Property's zoning or impose or consent to any other restriction or modification of the Property that would prevent or limit Tenant from using the Property for the uses intended by Tenant as set forth in this Lease.

(g) Tenant Inspections. At any time during the Option Period, Tenant may perform due diligence to evaluate utility interconnection and viability of developing the Facility on the Property. During the Option Period and any extension thereof, Landlord shall permit Tenant and Tenant's employees, agents and contractors, free ingress and egress to the Property to conduct tests, investigations, and similar activities as Tenant may deem reasonably necessary (collectively, "Inspections"), at Tenant's sole cost and expense. Tenant may determine the scope, sequence, and timing of the Inspections at its reasonable discretion, provided that Tenant shall make reasonable efforts to coordinate and schedule such Inspections so as not to unreasonably interfere with Landlord's or Landlord's tenant's use and enjoyment of the Property. Tenant and its employees, agents and contractors shall have the right to bring the necessary vehicles and equipment onto the Property to conduct the Inspections. Tenant shall indemnify, defend and hold Landlord harmless against any loss or damage for personal injury or physical damage to the Property resulting from any such Inspections ("Inspection Loss"). If in the course of performing the Inspections Tenant's employees, agents or contractors, or any extension thereof, discover any pollution or contamination that violates any local, state or federal environmental protection law, policy or regulation on the Property, Landlord shall indemnify, defend and hold Tenant harmless against any Inspection Loss resulting from such pollution or contamination unless such Inspection Loss was caused by Tenant's, or Tenant's employees', agents' or contractors' negligence. The foregoing sentence is in addition to, and shall not in any way limit, Tenant's rights under Section 12(c) of this Lease. Landlord shall cooperate with Tenant during the Inspections, including providing information about the Property characteristics, taxes, history and encumbrances.

(h) Landlord shall cooperate with Tenant during the Inspections, including providing information about the Property characteristics, taxes, history and encumbrances.

(i) Governmental Approvals. Tenant's ability to use the Property is contingent upon obtaining all certificates, permits, licenses and other approvals that may be required by any governmental authorities ("Permits") to construct, operate and maintain the Facility. Landlord

shall reasonably cooperate with Tenant in its effort to obtain such Permits, including signing documents required to file applications with the appropriate zoning authority and other governmental authorities for the proper zoning of the Property and for other Permits as Tenant reasonably requires. Tenant will perform all other acts and bear all expenses associated with any zoning action or other procedure necessary to obtain Permits deemed necessary by Tenant.

SECTION 3. LEASE. Subject to the Option being exercised, Landlord leases the Lease Area to Tenant as of the Lease Effective Date 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, 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.

SECTION 4. EASEMENTS.

(a) Subject to the Option being exercised, Landlord grants the following easements (the “Easements”) to Tenant as of the Lease Effective Date 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;

(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 the Facility to the Utility electrical distribution system, the location of which the Utility will determine before the Commercial Operations Date;

(iii) a solar easement and restrictive covenant, pursuant to 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 or any other property within Landlord’s control, which now or hereafter, in Tenant’s reasonable opinion, may be a hazard to the Facility, overshadow or otherwise block or interfere with sunlight access to the Facility at any angle and degree and/or interfere with Tenant’s exercise of its rights hereunder. Tenant may (but shall not be obligated to) remove, at Landlord’s cost, any vegetation, buildings or other structures which violate this easement. Notwithstanding anything herein to the contrary, Landlord shall reimburse Tenant for removal costs as an abatement of Rent. Landlord acknowledges and agrees that access to sunlight is essential to the value of the leasehold interest granted hereunder and this easement and restrictive covenant is a material inducement to Tenant in entering into this Lease, bargained for in good faith with the intention of binding Landlord and Landlord’s successors and assigns; and

(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) placement and use of other facilities reasonably necessary to construct, erect, install, expand, modify or remove the Facility.

(b) Landlord's grant of Easements in Sections (4)(a)(i) through (4)(a)(iii) shall commence on the Lease Effective Date and continue throughout the Term and any extensions of the Term, and for the time necessary and convenient to perform the Decommissioning Obligations, if such obligations extend beyond the Term. Landlord's grant of Easement in Section (4)(a)(iv) shall commence on the Lease 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 for the time associated with those activities, and for the time necessary and convenient to perform the Decommissioning Obligations.

(c) If required by the Utility, Landlord shall grant to the Utility 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 Utility electrical distribution system, the location of which the Utility will determine before the Commercial Operations Date. Landlord's grant under this Section 4(c) shall commence on its effective date and continue through the Term and any extensions of the Term, unless otherwise required by the Utility.

(d) Notwithstanding any other provision of this Lease, Landlord may grant easements to a Tenant Affiliate over and across the Property, and any exclusive easement granted under this Section 4 shall not be exclusive as to an easement granted to a Tenant Affiliate.

(e) All Easements shall burden the Property and shall run with the land for the benefit of Tenant, its successors and assigns (including any permitted assignees of Tenant's rights under the Lease), and their respective agents, contractors, subcontractors and licensees.

(f) At Tenant's request, Landlord shall timely execute agreements necessary to record the Easements granted under this Section 4.

SECTION 5. LEASE 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 Lease Effective Date and will terminate on the earliest of:

(A) Delivery by Tenant of notice of termination in accordance with Section 5(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 solar programs promulgated by a Government Authority. Additionally, the Development and Construction period shall be further extended automatically on a monthly basis for delays by the Utility in the completing interconnection upgrades or in interconnecting the Facility. 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 Development and Construction Period terminates by passage of time under Subsection (B), 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 5(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 20th anniversary of the Commercial Operation Date. Tenant may extend the Operations Period, first for one (1) ten (10) year term, and then for one or both of two (2) additional five (5) year terms. At least ninety (90) days before the beginning of an extension term, Tenant shall deliver 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 Memorandum of Lease and/or any other documents necessary to give record notice of the extension.

(iii) Decommissioning Period. The Decommissioning Period shall begin when the Operations Period and any extensions thereto expire, 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 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 Memorandum

of Lease and/or other documents reasonably necessary to evidence terminating this Lease. Termination of this Lease in accordance with this Section 5(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 6. TENANT'S USE OF THE PROPERTY; DECOMMISSIONING OBLIGATIONS. Tenant may use the Lease Area and Easements for Permitted Uses, subject to limitations set forth below:

(a) Development and Construction Period. During the Development and Construction Period, Tenant may use the Lease Area for development work and tests, project permitting and interconnection, and other activities associated with constructing the Facility.

(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 (such actions the "Decommissioning Obligations"). Tenant shall perform the Decommissioning Obligations during the Decommissioning Period or promptly after termination of this Lease due to any reason other than a Landlord default. If Tenant performs the Decommissioning Obligations after this Lease terminates, Tenant's access to the Property to perform those activities shall be pursuant to the Easements granted by Section 4.

SECTION 7. DEFINING THE LEASE AREA; CONSTRUCTING THE FACILITY; LANDLORD RESTRICTIONS.

(a) 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.

(b) Tenant may construct the Facility as Tenant, in its sole discretion, determines, provided such construction shall comply with Applicable Law and with this Lease.

(c) Tenant may remove trees as necessary within the Property to obtain solar access to the Facility, consistent with Section 4(a)(iii) (regarding the solar easement).

(d) After Tenant determines the Facility is capable of Commercial Operations, Tenant shall notify Landlord of the Commercial Operation Date.

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

(f) Landlord shall not 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.

(g) Landlord shall not construct or 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.

(i) 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 Utility 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.

(j) (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 (h) shall again apply.

SECTION 8. LEASE RENT PAYMENTS. Tenant shall pay Rent to Landlord as follows:

(a) Development and Construction Period. Two Hundred and Fifty Dollars (\$250) per month, pro-rated for partial months, to be paid in arrears on the last day of each month. The first payment of Rent during the Development and Construction Period (the “Initial Development and Construction Rent Payment”) shall be due on the last day of the first full calendar month to occur during the Development and Construction Period. The Initial Development and Construction Rent Payment shall include the amount of Rent due during the first partial month occurring during the Development and Construction Period (prorated from the date the Development and Construction Period commences), and Rent due for the first full month occurring during the Development and Construction Period.

(b) Operations Period.

(i) During the Operations Period, Tenant shall pay to Landlord Rent of Three Thousand Seven Hundred and Fifty Dollars (\$3750) per MW (DC) of the Facility’s solar photovoltaic generating capacity, per Operating Year, pro-rated for partial MWs.

(ii) Beginning with Operating Year 2022 and continuing with each Operating Year thereafter, the annual Rent shall be increased by the amount determined by multiplying the previous Operating Year Rent by one and one half percent (1.5%).

(iii) Rent for each Operating Year, including any Operations Period extensions, shall be paid quarterly, in arrears on the last day of each financial quarter. The first payment of Rent during the Operations Period (the “Initial Operations Rent Payment”) shall be due on the last day of the first full financial quarter to occur during the Operations Period. The Initial Operations Rent Payment shall include the amount of Rent due during the first partial financial quarter occurring during the Operations Period (prorated from the date the Operations Period commences), and Rent due for the first full financial quarter occurring during the Operations Period.

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

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

SECTION 9. TAXES

(a) Landlord shall be responsible for all taxes related to the Property other than Tenant’s obligations stated in Sections 9(b) and 9(c).

(b) Tenant shall be responsible for the following taxes during the Operations Period and the Decommissioning Period:

(i) all personal property taxes assessed against the Facility; and

(ii) real estate taxes assessed against the Lease Area due to Tenant’s lease of the Lease Area and the Facility operation on the Lease Area.


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(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 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) Landlord shall pay all taxes for which it is obligated on or before the date such amounts are due, subject to its right to contest taxes in accordance with this Lease and Applicable Law. 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 10. TITLE AND LIENS.

(a) Landlord represents and warrants that Landlord has marketable title to the Property subject to no liens, easements, options or other encumbrances other than the Existing Encumbrances.

(b) After the date of recording the Memorandum of Lease, 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 may record any such agreement, whether related to an Existing Encumbrance or an encumbrance arising after the Lease 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 30 days in the event of payment defaults, and 60 days in event of non-payment defaults, 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 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, unless Landlord obtains a final judgment against Tenant as a result of a Tenant Default under this Lease.

(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 11. FILINGS.

Landlord acknowledges that Tenant intends to develop, construct and operate the Facility on the Lease Area and Easements. Landlord hereby authorizes Tenant, in the name of Landlord, Tenant or both, as Tenant may deem to be necessary or appropriate, to file with federal, state and local authorities as Tenant deems appropriate (i) one or more applications to obtain any zoning relief or planning board approval 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 Utility to obtain approval to interconnect the Facility with the Utility'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 12. 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.

(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 Lease.

(c) Landlord shall indemnify, defend and hold harmless the Tenant 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 existed on or before the Option Effective Date or that is caused by the Landlord or any of its employees, invitees, agents or contractors following the Option Effective Date. 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 by the Tenant or any of its employees, invitees, agents or contractors following the Option Effective Date.

SECTION 13. MAINTENANCE, SECURITY AND UTILITIES.

(a) Maintenance. Tenant shall maintain the Lease Area and all Easements 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, and for all other costs and expenses in connection with the Facility use, operation, and maintenance.

SECTION 14. 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. If either party contests a taking the other party shall cooperate in the proceeding, but is not obligated to incur any expense in connection with such efforts.

(b) If, at any time during the Term, any Condemnor condemns all or substantially all of the Lease Area, or the Facility, so that the purposes of this Lease are frustrated, then Tenant's interests and obligations 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 Tenant's interest and obligations 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 14 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 Decommissioning Obligations, which shall survive any termination hereunder.

(d) For any taking covered by Sections 14(b) or 14(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 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 14(b) or 14(c) were to occur.

SECTION 15. ASSIGNMENT.

(a) Tenant may assign this Lease and rights hereunder

(i) in Tenant's sole discretion,

A. to any entity in which Tenant, or an Affiliate thereof, has an 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 16; and,

(ii) 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.

(b) (i) Landlord may assign this Lease and rights hereunder and may convey the Lease Area and/or the portion of the Property containing the Easements, subject to the following conditions:

1. Landlord gives prior notice to Tenant;

2. the Memorandum of Lease and of Easements are first recorded,

3. Landlord gives the assignee/grantee prior, written notice of the Lease,

4. Landlord concurrently obtains from the assignee or grantee an acknowledgement of the Lease and an agreement from the assignee or grantee to be bound by all of the obligations, covenants and conditions applicable to Landlord under this Lease, and a subordination or non-disturbance agreement as Tenant may reasonably request to protect and secure Tenant's interest in the Property, in the form described by Section 10(d), and

5. Landlord is not then in Default.

(ii) In the event Landlord seeks to assign this Lease or the income Landlord has the right to receive under this Lease to an assignee without also transferring Landlord's fee interest in the Property to such assignee, then Landlord must give prior written notice of such assignment to Tenant and such assignment shall be approved by Tenant in Tenant's sole discretion.

(c) Any assignment permitted hereunder, except under Section 15(b)(ii), shall release the assignor from obligations accruing after the date that liability is assumed by the assignee.

(d) Upon any assignment other than under Section 15(a)(i)(B) (regarding assignment to a Financing Party), the assigning Party shall provide to the other Party current information regarding the assignee's addresses and the term "Tenant" or "Landlord" in this Lease, as appropriate, shall refer to the entity that was assigned the rights and obligations hereunder.

Promptly after an assignment under Section 15(a)(i)(B), Tenant shall provide the Financing Party's address to Landlord.

SECTION 16. 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 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 and succeed to any and all Tenant rights hereunder, so long as there are no existing uncured Defaults; provided Financing Party shall not be required to cure any defaults by Tenant that by their nature are not capable of being cured by the Financing Party. Landlord shall execute any document reasonably requested by any Financing Party to evidence and give effect to the provisions of this Section 16(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 Lease and (2) agreeing to accord to such entity all the rights and privileges of a Financing Party hereunder.

SECTION 17. RECORDING, CONFIDENTIALITY.

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

(b) Neither Party may disclose the terms of this Lease to any other person, except as follows:

- (i) as provided in Section 17(a),
- (ii) to immediate family members,
- (iii) to assignees or prospective purchasers of Parties,
- (iv) to any counsel, lender, accountant or advisor engaged by a Party,
- (v) to the extent required by law, provided that the disclosing Party, to the extent practicable, gives notice of any request for disclosure to the non-disclosing Party and cooperates with efforts by the non-disclosing Party to minimize the extent of the information disclosed and the persons to whom it is disclosed; and
- (vi) Tenant may disclose the terms hereof to any contractor or supplier bidding upon construction of all or part of the Facility, to any person which may seek to provide financing for or to invest in the Facility, to any future subtenant or assignee, and as necessary for permitting related to the Facility.

SECTION 18. 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 19(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. A "Payment Default" is failing to make timely payments required herein.

(b) Landlord shall simultaneously notify 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 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 one and one-half percent (1 ½%) per month.

(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 one and one-half percent (1½%) per month and exercise any other remedies available under this Lease or Applicable Law, including terminating the Lease.

SECTION 19. 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 Lease, 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 20. NOTICES. All notices under this Lease shall be sent to the addresses set forth below:

LANDLORD: Larry Bugbee
686 Clay Hill Rd
Hoosick Falls, NY 12090
Email: labugbee@msn.com

TENANT: Nexam Solar, LLC
c/o Nexamp, Inc.
101 Summer Street, 2nd Floor
Boston, MA 02110
Email: Kidrees@Nexamp.com


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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 21. 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 22. 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 Lease (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 23(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 for at least three (3) hours 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 22(a) or 22(b) shall (except as provided in Section 22(c)(iii) be settled by binding arbitration between the Parties conducted in Boston, Massachusetts, 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.

(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 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 22 shall survive any termination of this Lease and shall apply (except as provided herein) to any Disputes arising out of this Lease.

SECTION 23. REPRESENTATIONS AND WARRANTIES.

(a) Each Party represents and warrants to the other Party as follows:

(i) Organization and Qualification. If an entity, it is duly organized and validly existing under the laws of the state of its purported organization with all power and authority to own or lease and dispose of all of its properties and assets, to conduct its business as presently conducted, and to enter into and carry out this Lease.

(ii) Authority. It has all requisite power and authority to execute and deliver this Lease and each of the related documents to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Its execution and delivery of this Lease and each of the related documents to which it is a party, its performance hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all requisite action its part and no other proceedings on its part are necessary to authorize this Lease and each related document to which it is a party, the performance of such obligations or the consummation of such transactions.

(iii) No Violation or Conflict; Consents. Neither the execution and delivery of this Lease or any of the related documents to which it is a party, nor the performance of its obligations hereunder and thereunder, nor the consummation of the transactions contemplated hereby and thereby will, directly or indirectly (with or without notice or lapse of time or both), (1) violate, contravene, conflict with or breach any term or provision of its organizational documents, (2) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, or require any consent under, any contract or other instrument or obligation to which it is a party or by which it or any of its respective properties or assets are bound, (3) violate any laws applicable to it or any of its Affiliates or any of their respective properties or assets, or (4) except as specifically provided herein and in any related documents, require any filing with, or the obtaining of any further authorization, permit, or other consent from any governmental authority, or (5) require any further authorization or other consent from any person or body with authority over or within its organization.

(b) Landlord represents and warrants that

- (i) no personal property is located on the Lease Area; and
- (ii) to the best of its knowledge, there are no hazardous substances present on, in or under the Property in violation of any Applicable Law.

SECTION 24. 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 22 (regarding dispute resolution) and an arbitrator may reform the Lease 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 24(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.

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

TENANT

LANDLORD

Nexamp Solar, LLC

Larry Bugbee

By:  _____

By:  _____
Larry Bugbee (Sep 8, 2020 23:03 EDT)

Name: Chris Clark
Title: SVP, Business Development

Name: Larry Bugbee
Title: Landlord

Sep 8, 2020

GLOSSARY OF TERMS

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

“Affiliate” means, as to any person or entity, any other person or entity that, directly or indirectly, is in control of, is controlled by, or is under common control with, such person or entity. For purposes of this definition, “control” of a person or entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

“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 Lease or the transaction described herein.

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

“Commercial Operation Date” means the date the Facility achieves Commercial Operation and Tenant receives permission to operate the Facility from the Utility, notice of which Tenant shall provide to Landlord according to Section 7(d).

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

“Decommission” or “Decommissioning Obligations”: means performing the activities described in Section 6(c).

“Decommissioning Period” is defined in Section 5(a)(iii).

“Default” is defined in Section 18(a).

“Development and Construction Period” is defined in Section 5(a)(i).

“Easement(s)” shall mean those areas of land described in Section 4, as detailed in Exhibit B, until during the Development and Construction Period when Tenant shall determine the Easements’ boundaries by means of a survey, and such survey shall then define the Easements 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, optional energy storage device(s), and all related equipment and structures necessary or convenient for the Permitted Use, including interconnection with the Utility, to be installed by Tenant on the Lease Area in accordance with this Lease.

“Financing Party” is a 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.

“Force Majeure” is defined in Section 19.

“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 12(b).

“Indemnifying Party” is defined in Section 12(b).

“Initial Development and Construction Rent Payment” is defined in Section 8(a).

“Initial Operations Rent Payment” is defined in Section 8(b)(iii)

“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.

“Utility” means the local electric power distribution company.

“Lease Effective Date” is the day after the Option is exercised.

“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 17(a).

“Non-payment Default” is defined in Section 18(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 5(a)(ii).

“Option Period” is defined in Section 2(b).

“Payment Default” is defined in Section 18(a).

“Permitted Encumbrances” mean the Existing Encumbrances and any additional mortgages granted by Landlord in accordance with Section 10(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 and/or energy storage device(s), ii) to produce, deliver 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 constructing a single story storage shed.

“Property” means the real property 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 8 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.

“Term” means all of the Development and Construction Period, the Operations Period, and the Decommissioning Period, as such periods are described in Section 5.

EXHIBIT A

PROPERTY DESCRIPTION

The Property means the real property located at Wilson Hill Rd, with the Tax ID 26.-1-12.21/1 in the Town of Hoosick, NY, containing approximately 99.52 acres, which is the property conveyed to Landlord by deed recorded in the Office of the Clerk of Rensselaer County at Book 93, Page 604.


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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 a portion of the Property to be 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.

The Tenant intends to develop up to 30 acres on the Property, and intends to follow the preliminary site plan below, unless design is amended as a result of due diligence during development.



Easements:

The Easements shall mean those areas of land and rights thereon described in Section 4 of the Lease. During the Development and Construction Period Tenant may determine the Easements' boundaries 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.


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EXHIBIT C
EXISTING ENCUMBRANCES

[Landlord to provide]