

## **Fiscal Year 2025**

### **Warrant Article 26**

#### **Ratification of Lease Agreement between the Board of Selectmen and Kearsarge, LLC**

Shall the Town of Hudson vote, pursuant to RSA 41:11-a, to ratify a Lease Agreement between the Board of Selectmen and Kearsarge Energy, LLC (“Kearsarge”) according to which Kearsarge will be leasing a portion of the West Road Landfill property located at 26 West Road (Tax Map 100-002-000) for a solar generation facility. The initial term of the lease shall be twenty-five (25) years, and may be extended for three (3) additional five (5) year terms (total 40 years). Rental payments during the first year of the lease shall be \$48,440, and thereafter increase by 2.25% annually. Copies of the full text of the Lease Agreement are available at the Town Clerk’s office.

No tax rate impact.

Recommended by the Board of Selectmen 3-2

## SOLAR ENERGY FACILITY SITE LEASE AGREEMENT

THIS LEASE AGREEMENT entered this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the “**Effective Date**”) between the TOWN OF HUDSON, NEW HAMPSHIRE, (the “**Town**”) a New Hampshire municipal corporation and KEARSARGE HUDSON LLC, a Massachusetts limited liability company, (“**Company**”).

WHEREAS, the Town is the owner of that certain parcel of land located at 26 West Road, Hudson, NH 03051 as more fully described on Exhibit A, attached hereto and made a part hereof (the “**Leased Premises**”); and

WHEREAS, a portion of the Leased Premises is a closed (capped) landfill; and

WHEREAS, Company intends to construct, install, operate, own and maintain a solar energy generation facility as more fully described on Exhibit B attached hereto and made a part hereof, referred to herein as the “**Solar Energy Facility**”; and

WHEREAS, the Town and Company have entered into a certain Net Metering Credit Sales Agreement dated \_\_\_\_\_, 2024 (the “**NMCSA**”) wherein the Town will purchase and receive from Company, Net Metering Credits generated by the Solar Energy Facility resulting in substantial reductions in energy costs to the Town over the life of the NMCSA; and

WHEREAS, Company requires the execution of a ground lease agreement with the Town for the installation, construction, ownership and maintenance of a Solar Energy Facility and for the use, occupancy, and possession of the Leased Premises for that purpose; and

WHEREAS, the Town has determined that the granting of such a ground lease for that purpose is in the best interest of the Town and will also put to good use public land that would otherwise have no useful purpose;

NOW THEREFORE, in consideration of the above, the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

01.0 Term. The term (the “**Term**”) of this Lease Agreement (“**Lease Agreement**” or “**Lease**”) shall commence on the Effective Date, and shall end at the earlier of (i) 11:59 PM on the day preceding the twenty-fifth (25th) anniversary of the Commercial Operations Date (the “**Termination Date**”), or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof. No less than one hundred and eighty (180) days before the expiration of the Term or an Extension Term, in the event there remain no defaults amongst the parties, the parties may agree in writing to extend this Agreement on the same terms and conditions as the Term up to three (3) times for a period of five (5) years each (the “**First Renewal Term**”, the “**Second Renewal Term**”, and the “**Third Renewal Term**” each an “**Extension Term**”). This Lease Agreement is coupled with the interest of Company in the Solar Energy Facility and shall not be revoked or terminated except as expressly set forth in this Lease Agreement. The “**Commercial Operations Date**” means the first date on which the Solar Energy Facility generates electric energy on a commercial basis, and the interconnection to the local electric distribution company (“**LDC**”) has been authorized and is functioning with the LDC.

02.0 Grant of Lease. The Town grants to the Company, subject to the terms and conditions set forth herein, the right to lease to construct, install, operate, own and maintain upon the Leased Premises a Solar Energy Facility, including the right to install such equipment that is necessary or incidental to the installation, operation and maintenance thereto, including without limitation solar modules, mounting substrates, supports and weights, wiring and connections, power inverters, service equipment, metering equipment and utility connections but for no other purpose during the Term.

02.1 In addition, this Lease includes the (i) the non-exclusive right for ingress and egress to Leased Premises (ii) necessary utility access, including grading, installation of utilities, and related rights in, over, under and across the Leased Premises, and surrounding Town property and access road, and (iii) to use the surrounding or nearby property owned by Town, for temporary storage and staging of tools, materials, equipment, and for the parking of construction vehicles and equipment in connection with the installation work, each as reasonably necessary for the purpose of installing, operating and maintaining a solar energy generation facility, the sale of energy therefrom, and such other uses as may be necessary or incidental thereto.

03.0 Lease Rent. During the Term of this Lease Agreement, Company shall pay to the Town: (i) a monthly rent payment in the amount of \$7,000.00 per MW DC based on the Solar Energy Facility permitted size starting at the commencement of construction and ending on the Commercial Operations Date and (ii) an annual lease rent in the amount of \$14,000 per MW DC based on the as built size of the Solar Energy Facility commencing on the Commercial Operations Date as set forth on Exhibit C attached hereto and incorporated herein by this reference.

04.0 Construction, Installation, Maintenance and Operation. The following provisions and procedures shall apply to the construction and installation of the Solar Energy Facility as well as to any extensions and/or repairs, renovations and improvements (including corrective work) thereto, all of which shall be individually and collectively referred to as the “**Work**”.

04.1 Prior to the commencement of any Work on the Solar Energy Facility, Company shall obtain all Federal, State, and local approvals (“**Governmental Approvals**”), including without limitation, a variance from the Zoning Board of Adjustment and Site Plan Approval from the Planning Board. Company shall specifically construct, install, maintain, and operate the Solar Energy Facility to comply with all specifications included in Governmental Approvals. In the event that the terms of this Lease Agreement conflict with the Governmental Approvals, the terms of the Governmental Approvals shall be deemed controlling. Once approved by the Town, the Work shall be conducted in accordance with the approved plans and specifications and no material changes or modifications shall be made without the further written approval of the Town. Unless expressly waived in writing by the Town, all such plans and specifications for the Work shall be prepared by a licensed engineer. During the construction or the performance of the Work, Company and/or its contractor shall conduct regularly scheduled meetings (no less than monthly or as reasonably requested by either party), with the Town to review the progress and quality of the work being performed on the Leased Premises and to identify and resolve any related issues and problems. The Town's participation in this process is primarily for administrative purposes to ensure that the Work is being conducted in accordance with the approved plans and specifications and shall not constitute an agency, joint venture, or partnership relationship with Company. Company shall remain solely responsible for the Work and, in addition to any other indemnification set forth herein, does hereby

agree to indemnify, defend and hold harmless the Town, their respective agents, representatives, members, directors, officers, employees, agents, successors and assigns, from any and all loss, liability or payment of any claims or demands of any kind or nature, arising out of or related in any way to the Work, the approval of the plans and specifications by the Town, or any design defect whether or not reviewed or approved by the Town.

04.2 In addition, all Work to be constructed, erected or maintained on or at the Leased Premises shall be constructed, erected and maintained in good workmanlike manner in accordance with good engineering practices and all applicable legal requirements including local building permits and the permits and approvals as issued by the New Hampshire Department of Environmental Services (“NHDES”) particularly as it relates to the protection of the landfill cap. Company’s construction, operation and maintenance of any and all improvements on or at the Leased Premises shall at all times comply with all applicable federal, state, and local laws (including the local Zoning By-law), rules and regulations as they may be enacted or amended from time to time.

04.3 Interconnection with Electric Distribution Grid. Company will apply at its sole cost for all approvals and agreements required for Company’s interconnection of the Solar Energy Facility to the LDC System. Town shall fully cooperate with Company in Company’s efforts to apply for and obtain all such approvals and agreements as may be reasonably required by the applicable authority at no cost to Town, provided Company shall have no obligation to pay or reimburse Town for any costs or expenses incurred by Town in connection with its review of any related documents, applications or authorizations. Company will promptly inform Town of all significant developments related to such interconnection matters.

04.4 As-Built Plans. Within ninety (90) days following completion of construction and installation of the Solar Energy Facility, Company shall prepare and deliver to Town detailed as-built plans accurately depicting the Solar Energy Facility including, without limitation, all wiring, lines, conduits, piping and other structures or equipment.

04.5 Inspection and Entry. During the course of construction, installation, maintenance and operation of the Solar Energy Facility and any substantial alteration thereto, Company shall maintain all plans, shop drawings, and specifications relating to such construction which Town, its agents or contractors may examine during business hours for the purpose of determining whether the work conforms to the agreements and approvals contained or referenced in this Lease Agreement. Town may enter upon the Leased Premises and inspect the Solar Energy Facility for the purpose of ascertaining their condition or whether Company is observing and performing the obligations assumed by it under this Lease Agreement. Town shall use its best efforts to exercise such right in a manner that does not disrupt Company’s business operations on the Leased Premises. In all non-urgent and non-emergency circumstances, the Town shall provide prior notice of such inspection or entry.

04.6 From time to time the Town or its agents will need to access the Leased Premises to perform monitoring requirements for regulatory compliance activities as required by NHDES. Where the Town is aware of the need for inspection or access in association with regulatory activities, it shall provide twenty-four (24) hours’ advance notice to the Company. All such access

shall be in compliance with Section 06.0 hereof. Company shall not unreasonably deny access by the Town for said monitoring activities.

04.7 Company will be responsible for obtaining, at its sole cost and expense, all approvals, and permits necessary for the construction of any and all improvements related to the Solar Energy Facility on or at the Leased Premises, and the operation and maintenance of said improvements on or at the Leased Premises, including, without limitation, any Governmental Approvals, including but not limited to required permits and approvals from the NHDES relative to construction on the Landfill.

05.0 Title to the Solar Energy Facility. The Solar Energy Facility and all related equipment, alterations, additions, improvements or installations made thereto by Company and all Company property used in connection with the installation, operation and maintenance of the Solar Energy Facility is, and shall remain, the personal property of Company (“**Company Property**”). Company and/or Company’s Financing Parties, defined below, shall be the legal and beneficial owner(s) of the Solar Energy Facility and Company Property at all times. In no event shall any of Company Property be deemed a Town fixture, nor shall Town, nor anyone claiming by, through or under Town (including but not limited to any present or future mortgagee of the Leased Premises) have any rights in or to Company Property at any time except as otherwise provided herein. Town shall have no development or other interest in the Solar Energy Facility or any Solar Energy Facility assets or other equipment or Company Property installed on the Leased Premises, and Company may remove all or any portion of the Solar Energy Facility or any Solar Energy Facility assets or Company Property at any time and from time to time as further provided in this Lease Agreement. Without limiting the generality of the foregoing, Town hereby waives any statutory or common law lien that it might otherwise have in or to the Solar Energy Facility and other Solar Energy Facility assets or any portion thereof.

06.0 Access and Removal.

06.1 At all times throughout the Term of this Lease Agreement, and at no additional charge to Company, Company and its employees, agents, and subcontractors, will have twenty-four (24) hour, seven days per week access to and over the Lease Premises for the installation, maintenance, operation and, subject to Section 06.4 of this Lease Agreement, removal and disposal of the Solar Energy Facility and any utilities serving the Leased Premises. In the event any public utility is unable to use the access provided to Company, the Town hereby agrees to grant an additional access either to Company or to the public utility, for the benefit of Company, at no cost to Company, such as is necessary for access or utility pole easements.

06.2 [Intentionally Omitted]

06.3 Notwithstanding the foregoing, Company acknowledges and accepts that the Town shall have continued access to the Leased Premises for the purpose of monitoring and maintaining, repairing or improving the landfill, including the gas releases and wells on the Leased Premises under the Post Closure Use permit of the Town as well as the Town’s cutting of the grass on the remainder of the surrounding property, outside of the Leased Premises. Company shall in no way install the Solar Energy Facility and related systems as to interfere with Town’s obligation to

undertake said maintenance and monitoring of the Landfill. Town's ongoing reasonable maintenance and monitoring of the Landfill shall at no time be considered a violation of this Section 06.0 or an interference with the Company's rights under this Lease Agreement. Town shall use its best efforts to perform its obligations with respect to the landfill with minimum disruption or interference to the use of the Leased Premises or operation of the Solar Energy Facility by Company. In the event that any component of the landfill, including the landfill cap, requires repair or replacement, through no fault of Company, then Company shall, at Town's sole cost and expense, cooperate with Town to relocate those portions of the Solar Energy Facility and/or related equipment and installations necessary for the repair or replacement work to be performed so as to minimize system down time. Company shall, as its sole remedy, be entitled to, for any disruption or interference resulting from the Town's performance of its obligations related to the landfill: (i) an equitable adjustment to the Lease Rent; (ii) an equitable adjustment of NMCSA Section 2.2 minimum output; and (iii), reimbursement for any damages or lost revenues incurred under any Renewable Energy Certificate and/or capacity contracts.

06.4 All portions of the Solar Energy Facility brought onto the Leased Premises by Company will be and remain Company's personal property. Town covenants and agrees that no part of the Solar Energy Facility constructed, erected or placed on the Leased Premises by Company will become, or be considered as being affixed to or a part of, the Leased Premises, it being the specific intention of the Town that all improvements of every kind and nature constructed, erected or placed by Company on the Leased Premises will be and remain the property of Company and shall be removed by Company at the end of the Term as set forth herein unless the parties agree otherwise in writing as an amendment hereto. Upon the expiration or earlier termination of this Lease Agreement, Company shall, within (180) days of such termination, at its sole cost, remove and, in accordance with applicable laws, dispose of the Solar Energy Facility, and shall restore the Leased Premises to its original condition, excepting normal wear and tear and in a condition free of trees and other vegetation as removed during construction of the Solar Energy Facility.

06.5 The Company shall post a surety bond or other financial guarantee in an amount the parties determine as well as any other performance surety as may be required by the Government Approvals, to be sufficient to cover the removal of the Solar Energy Facility and restoration of the Leased Premises to its original condition, as set forth in 6.4 above.

#### 07.0 Approvals and Inspections.

07.1 Town agrees that Company's ability to use the Property is contingent upon its suitability for its intended use and Company's ability to obtain all governmental licenses, permits, approvals or other relief required of or deemed necessary by Company for the Intended Use, including the Governmental Approvals. Town authorizes Company to prepare, execute and file all required applications to obtain Governmental Approvals for Company's intended use under this Lease Agreement. Town agrees to fully cooperate with Company in Company's efforts to apply for and obtain all such approvals and agreements as may be reasonably required by the applicable authority at no cost to Town, provided Company shall have no obligation to pay or reimburse Town for any costs or expenses incurred by Town in connection with its review of said documents, applications or authorizations, except with respect to local permits and/or approvals where Town's assistance may constitute a conflict of interest.

07.2 Company has the right to obtain a title report or commitment for a title policy from a title insurance company of its choice and to have the Leased Premises surveyed by a surveyor of its choice, all at Company's sole cost and expense.

07.3 Company may also obtain, at Company's sole cost and expense, soil boring, percolation, engineering procedures, environmental investigation or other tests or reports ("**Tests**") necessary to determine if Company's intended use will be compatible with Company's engineering specifications, system design, operations or Governmental Approvals. Company will indemnify Town against all costs (including reasonable attorney's fees), claims, and damages relating to the conducting of said tests and inspections, excepting requirements contained within applicable environmental reporting guidelines and any resulting remediation required of Town. Company shall restore the Leased Premises to the same condition as it existed prior to Company having conducted the Tests. All such Tests will be conducted only with the prior approval of the Town which approval will not be unreasonably withheld and, where necessary, with the prior approval of NHDES.

07.4 Company's satisfactory inspections of the title to and condition of the Leased Premises and Company obtaining all Governmental Approvals, as set forth in this article 07.0, are each a condition precedent to Company's obligations under this Lease Agreement (the "**Conditions Precedent**"). If Company is unsatisfied with the results of any of the inspections, in Company's sole and absolute discretion, or if Company is unable to obtain all of the Governmental Approvals in form and substance acceptable to Company, in Company's sole and absolute discretion, or if prior to commencement of construction of the Solar Energy Facility, Company is not able to qualify the Solar Energy Facility for the New Hampshire Net Metering Program, or satisfy any Conditions Precedent, then Company may terminate this Lease Agreement, in which event the termination shall be effective when the notice is given, and the parties shall be released from further liability at law or equity pursuant this Lease Agreement.

#### 08.0 Maintenance and Utilities.

08.1 Company will keep and maintain vegetation within the Leased Premises and keep the Solar Energy Facility in good working condition, reasonable wear and tear and damage from the elements excepted.

08.2 Company will be solely responsible for and promptly pay all utilities charges for electricity, telephone service or any other utility used or consumed by Company on the Leased Premises, including, without limitation, operation of the Solar Energy Facility.

08.3 Town shall give Company prompt notice of any deficiency, damage to or defective condition of the Solar Energy Facility and/or Leased Premises discovered or uncovered during an inspection or through routine security procedures and Company will take commercially reasonable efforts to correct said deficiencies, damage or defective conditions in accordance with Section 3.4 of the NMCSA.

08.4 Town acknowledges and agrees that access to sunlight (“**Insolation**”) is essential to the value to Company of the Lease granted hereunder and is a material inducement to Company in entering into this Lease Agreement. Accordingly, Town shall not, when it is within its control, permit any material interference with Insolation on and at the Leased Premises, the surrounding property, or any adjoining real property owned by Town. Without limiting the foregoing, Town shall not construct or permit to be constructed any structure on the Lease Premises, or adjoining real property owned by Town, that could adversely affect Insolation levels, permit the growth of foliage that could adversely affect Insolation levels, or directly emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation. Notwithstanding any other provision of this Lease, the parties agree that Company would be harmed by a breach of the provisions of this section, that an award of damages would be inadequate to remedy such breach, and that Company shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions hereof, however, Company shall provide Town with ten (10) days prior notice to taking any action to exercise the rights granted under this subsection.

08.5 Company also acknowledges and agrees that the NHDES post closure use permit may impose certain conditions and requirements which are related to the Company’s use of the Leased Premises and/or the installation, construction and/or operation of the Solar Energy Facility and which would not have been imposed on Town were it not for this Lease Agreement, and that Company shall, at its sole cost and expense, be responsible for those conditions and requirements, as well as for the routine mowing of the landfill and control of vegetation within the Leased Premises in order to comply with any NHDES requirements.

09.0 Mechanics and Other Liens. Company shall not permit or suffer to be filed against the Leased Premises, the Solar Energy Facility or any interest therein, any mechanics’ liens, materialmens’ liens, or other liens, claims or encumbrances of any kind. If any such lien, claim or encumbrance is filed against the Leased Premises, Solar Energy Facility or any interest therein, it shall be the duty of Company, within sixty (60) days after receipt of notice of such lien, claim or encumbrance, to cause the Leased Premises, Solar Energy Facility or interest so liened to be fully released therefrom, either by payment, posting a bond, payment into the registry of court of an amount necessary to relieve and fully release the Leased Premises, Solar Energy Facility or interest from such lien, claim or encumbrance, or in any other manner which, as a matter of law, shall result in such release within such period of sixty (60) days. In the event of the failure or refusal of Company to cause the Leased Premises, Solar Energy Facility or interest to be so released from all liens, claims or encumbrances, the Town shall have the right, but not the obligation, to make the payments or to post such bonds in the amount necessary to so release and discharge the said lien, claim or encumbrance and invoice the Company the amount of the payments made by the Town or the costs of such bonds which shall be due and payable within thirty (30) days from the date of invoice. In addition, and subject to the rights of a Lender (“**Lender**” means the entity or person(s) providing financing to Company in connection with the Solar Energy Facility), the amount of such costs and expenses shall constitute a charge and lien upon the Solar Energy Facility and related equipment and systems to secure the repayment of said amounts to the Town.

09.1 This section shall not apply to any secured loan issued to Company by an approved secured Lender or creditor for the construction of the Solar Energy Facility or to any extensions

and/or repairs, renovations and improvements (including corrective work) to the existing Solar Energy Facility in which the Solar Energy Facility has been pledged as security for the loan.

10.0 Insurance. Company shall obtain, keep and maintain in full force and effect, at its sole cost and expense, during the Term of this Lease Agreement, insurance policies in standard form and with such companies as are satisfactory to the Town. Policies shall be as follows:

10.1 Company shall carry during the Term of this Lease Agreement and any extension or renewal thereof workers' compensation insurance as required by New Hampshire law.

10.2 Company shall carry during the Term of this Lease Agreement and any extension or renewal thereof commercial general liability insurance in the amount of not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) general aggregate, with a ten million dollar (\$10,000,000) umbrella policy.

10.3 Commercial general liability insurance shall include contractual liability insurance. The policy of commercial general liability insurance shall name the Town as additional insured. All certificates and policies shall contain the following provisions: Notwithstanding any other provision herein, should any of the above policies be cancelled or materially amended before the expiration date thereof, Company shall immediately notify Town. Company shall forthwith, but at least within five (5) business days of notice of cancellation secure replacement and retroactive insurance coverage in compliance with the requirements of this Lease Agreement and provide notice of same to Town.

10.4 Company shall provide to the Town current certificates of insurance from the insurance carrier for each such policy of insurance stating the limits of liability and the expiration date of the policy. Renewal Certificates shall be filed with the Town at least 10 days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the Town 10 days prior to the commencement of construction, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Lease Agreement and shall state that such insurance is as required by this Lease Agreement. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Lease Agreement and shall be grounds for immediate termination. Said insurance shall include: Workers Compensation and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from Leased Premises, operations, independent Contractors, personal injury, contractual liability. All Certificates of Insurance shall be on the "MIIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses. All insurance shall be written on an occurrence basis. Coverages shall be maintained without interruption from date of the Lease Agreement until date of final payment and termination of any coverage required to be maintained after payment.

10.5 Company shall obtain and maintain during the Term of this Lease Agreement insurance coverage issued by companies licensed to do business in the State of New Hampshire.

10.6 [Omitted Intentionally]

10.7 For any claims resulting from or relating to Company's use of the Leased Premises, including the installation, operation, maintenance, ownership, repair, or removal of the Solar Energy Facility, Company's insurance coverage shall be primary.

10.8 The amounts and types of insurance coverages required by this Lease Agreement shall be subject to review no less than every three (3) years during the Term of this Lease Agreement, beginning on the third year anniversary date of the Effective Date and on every third year anniversary of said date thereafter. The amounts and types of insurance coverages required by this Lease Agreement may be changed or modified in such amounts and types as agreed upon by the parties following each review, or in absence of such agreement, as shall be reasonably required by the Town. All insurance carriers selected by Company (i) must be licensed to do business in the State of New Hampshire, (ii) must have an AM Best Rating of A- or higher and (iii) must have an AM Best Financial Size Rating of XII or larger (Assets of \$1 billion to \$1.25 billion).

11.0 Indemnification.

11.1 Company agrees to and shall indemnify, defend and hold harmless the Town, their respective officers, employees, contractors or agents, from any and all payment, liability, loss or damage, including reasonable attorney's fees and court costs, arising out of any claims, demands or actions for Leased Premises damages, personal injuries, including bodily injuries or death, caused by or resulting from: (i) the breach of any representation, warranty, term or condition of this Lease Agreement by Company; (ii) the use and occupancy of the Leased Premises by Company, its employees and/or agents; (iii) the construction, installation, ownership, management, maintenance and operation of the Solar Energy Facility and related equipment, connections and systems; (iv) any damage to the landfill by the Company, its employees, contractors or agents; or (v) any acts or omissions of Company, its officers, directors, employees, contractors or agents.

11.2 Subject to the limitation of liability contained in New Hampshire law, the Town shall be liable to the Company, its officers, employees, contractors and agents for any loss or damage arising from claims for property damage, including the Solar Energy Facility, caused by: (i) the material breach of this Lease Agreement by the Town; and or (ii) the negligence or intentional acts or omissions of Town or any of its officers, directors, employees, contractors or agents pursuant to this Lease Agreement.

11.3 The provisions of this Section 11.0 shall survive the expiration or termination of this Lease Agreement.

12.0 Hazardous Materials. Company represents and warrants that it will not use, introduce, bring or cause to be brought, allow or suffer to be present on the Leased Premises or in the Solar Energy Facility or any other place or location on the Town's campus and Leased Premises, any products, substances, pollutants or materials defined as hazardous, toxic or subject to regulation in violation of applicable law as such by law without the prior written consent of the Town which may be granted or withheld in the sole and absolute discretion of the Town. Company shall be

solely liable and responsible for bodily injuries to any person, including death, or for any property damages to any person or entity, including the Town, of any kind, including any spills, releases, pollution or other damage to the environment caused by or related in any way to its use, possession or control of such hazardous or toxic materials, and in addition to any other indemnification contained in this Lease Agreement, hereby agrees to indemnify, defend and hold harmless the Town, their respective officers, employees and agents, from and against any related loss, payment or liability, including without limitation all reasonable costs and expenses or penalties assessed or imposed by any governmental agency or entity. This Lease Agreement shall not affect any of the Town's existing rights, obligations, and liabilities arising from its maintenance of the Leased Premises pursuant to applicable Federal, State, and local hazardous waste laws, or create any obligations or liabilities to Company related to hazardous materials in existence as of the Effective Date.

### 13.0 Warranties and Covenants.

13.1 Company and Town each acknowledge, represent, and covenant that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Lease Agreement and bind itself hereto through the party set forth as signatory for the party below.

13.2 Town represents and warrants that:

(i) it holds legal title in and to the Leased Premises and is not aware of any liens, restrictions, easements, or leases of record, or not of record, which would adversely affect Company's intended use of the Leased Premises under this Lease Agreement and in the event, during the term of this Lease Agreement, such a lien, restriction, easement, license or lease becomes known to the parties that adversely affects the Company's intended use of the Leased Premises, Town, at Town's sole cost and expense, agrees to use commercially reasonable efforts to resolve such matter so as to ensure Company's intended use of the Leased Premises is not disrupted;

(ii) its' execution, delivery and performance of its obligations under this Lease Agreement have, except as otherwise provided herein, been duly authorized by all necessary action, and do not and will not require any further consent or approval of any other person, other than the governmental approvals required to be obtained under this Lease Agreement, and will not violate any laws, bylaws, ordinances, covenants or the provisions of any agreement binding on the Town, any valid order of any court or regulatory agency of other body having authority to which Town is subject except those permits to be issued by the NHDES for the Landfill closure and post closure use for which the Company shall be obligated to seek a modification of and further the permits under the zoning by laws of which the Company is responsible to obtain.

(iii) There are no outstanding written or oral leases, purchase or sale agreements or other agreements, including rights to purchase, or restrictions (other than those related to the landfill) encumbering, or in any way affecting the Leased Premises or surrounding property, and no person or entity has any right with respect to the Leased Premises or

surrounding property, whether by option to purchase, contract or otherwise, that would prevent or interfere with any of Company's rights under this Lease Agreement;

(iv) the landfill is closed in full compliance with New Hampshire and federal applicable regulations;

(v) Town has no knowledge of any pending or threatened proceedings in eminent domain, or for a sale in lieu thereof, affecting the Leased Premises or surrounding property or any portion thereof, or of any plans for a possible widening of the streets abutting the Leased Premises or surrounding property.

(vi) Subject to the use of the Leased Premises as a capped landfill and, and the obligations of Town and Town Parties under Applicable Laws and Governmental Approvals in connection with the maintenance, repair, monitoring and testing of the landfill cap and area, (collectively, "**Town Activities**"), and the terms of the Lease Agreement, and so long as Company is not in default of the Lease Agreement, Town also covenants that Company shall have quiet and peaceful possession of the Leased Premises without hindrance to or interference with or molestation of Company's quiet enjoyment thereof by Town, throughout the Lease Agreement Term.

(vii) Excluding the Town Activities, Town will not conduct activities on, in or about the Leased Premises or surrounding property that materially and adversely affects the Solar Energy Facility or operation thereof, including the obstruction of insolation.

### 13.3 Company represents:

(i) it is experienced in the operation, development and construction of solar energy facilities comparable to the proposed Solar Energy Facility and has done so successfully in other locations of similar size and on landfills.

(ii) it knows and understands that the System will be built upon a closed Landfill which is governed by NHDES regulations regarding closed landfills and the Leased Premises is subject to applicable permits and the Company takes subject thereto.

(iii) its execution and delivery of and performance of its obligations under this Lease Agreement have, except as otherwise provided herein, been duly authorized by all necessary action, and do not and will not require any further consent or approval of any other person or entity, and will not violate any bylaws, rules, agreements, articles of organization or votes of the company or the provisions of any mortgage, lease or other agreement binding on the Company.

(iv) the person(s) signing this Lease Agreement have full authority to execute this Lease Agreement and after said execution it shall be binding upon the Company.

(v) the Company will comply with all environmental and all laws applicable to the Leased Premises and surrounding property and will comply with all conditions set forth by NHDES as pertinent to the design, construction and operation of the System.

14.0 Taxes and Assessments. Company shall promptly pay or cause to be paid, any and all Leased Premises taxes, fire district taxes, sewer, water and/or other municipal or like charges and assessments imposed on the Solar Energy Facility and improvements by the Town of Hudson and/or other taxing authority, if any. The failure or refusal of Company to promptly pay or cause to be paid the said taxes and assessments as provided herein may result in the termination or revocation of this Lease Agreement by the Town without penalty or liability to the Town. This section shall not apply if the failure or refusal to pay such amount is related to an appeal of such taxes or assessments and Company is diligently pursuing such appeal and has complied with any administrative or judicial condition or requirement related to the appeal.

In accordance with the requirements of RSA § 72:23, I (b), the Company and any other entity now or hereafter using or occupying the Leased Premises pursuant to this Lease Agreement shall be responsible for the payment of, and shall pay, all properly assessed real and personal property taxes no later than the due date. Failure of the Company to pay duly assessed personal and real property taxes when due, after notice and an opportunity to cure shall be cause to terminate this Agreement.

Furthermore, in accordance with the requirements of RSA § 72:23, I (b), the Company and any other entity using and/or occupying the Leased Premises pursuant to this Lease Agreement shall be obligated to pay real and personal property taxes on structures or improvements added by the Company or any other entity occupying the Leased Premises pursuant to this Agreement.

If the Effective Date of this Agreement is after April 1 of a given tax year, taxes for the Leased Premises and Personal Property will be prorated for the tax year during which the parties entered into this Lease Agreement.

The parties agree that the tax obligations set forth herein will be governed by a Payment in Lieu of Tax Agreement executed by the parties.

15.0 Assignment and Secured Financing.

15.1 Prior Written Consent. No party shall assign or in any manner transfer this Lease Agreement or any part thereof without the prior written consent of the other party, which consent may not be unreasonably conditioned, withheld or delayed, except that no prior written consent shall be required in connection with any assignment by Company (i) in connection with the financing of the Solar Energy Facility or (ii) with respect to an assignment of the Solar Energy Facility to an affiliate of Company, providing such affiliate has demonstrated to the reasonable satisfaction of Town that it has the capability and financial capacity to perform all of Company's obligations under this Lease Agreement. Upon request of the Company in connection with any assignment pursuant to clause (ii) of the preceding sentence, the Town shall enter into a new agreement with the assignee incorporating the same terms and conditions as set forth in this Lease Agreement with respect only to the Solar Energy Facility owned by such assignee and with a term

equal to the remaining portion of the Term.

## 15.2 Collateral Assignment; Financing Provisions.

(a) **Financing Arrangements.** Company may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Lease Agreement to any persons providing financing for the Solar Energy Facility. Town acknowledges that in connection with such transactions Company may secure Company's obligations by, among other collateral, an assignment of this Lease Agreement and a first security interest in the Solar Energy Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Town agrees as follows:

(i) **Consent to Collateral Assignment.** Town hereby consents to the collateral assignment for the financing of the Company's right, title and interest in and to this Lease Agreement.

(ii) **Rights of Lender.** Notwithstanding any contrary term of this Lease Agreement:

(A) **Step-In Rights.** The Lender, as owner of the Solar Energy Facility, or as collateral assignee of this Lease Agreement, shall be entitled to exercise, in the place and stead of Company, any and all rights and remedies of Company under this Lease Agreement in accordance with the terms of this Lease Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Lease Agreement and the Solar Energy Facility;

(B) **Opportunity to Cure Default.** The Lender shall have the right, but not the obligation, to pay all sums due under this Lease Agreement and to perform any other act, duty or obligation required of Company thereunder or cause to be cured any default of Company thereunder in the time and manner provided by the terms of this Lease Agreement. Nothing herein requires the Lender to cure any default of Company under this Lease Agreement or (unless the Lender has succeeded to Company's interests under this Lease Agreement) to perform any act, duty or obligation of Company under this Lease Agreement, but Town hereby gives it the option to do so;

(C) **Exercise of Remedies.** Upon the exercise of remedies, including any sale of the Solar Energy Facility by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Company to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Town of the transferee or assignee of this Lease Agreement. Any such exercise of remedies shall not constitute a default under this Lease Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Lease Agreement pursuant to any process undertaken with respect to Company under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Town shall enter into a new agreement with Lender or its assignee incorporating the same terms and conditions as set forth in this Lease Agreement.

(iii) Right to Cure.

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

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Company's assets and shall, within the time periods described in Section 15.2(a)(iii)(A), cure all material defaults under this Lease Agreement existing as of the date of such change in title or control in the manner required by this Lease Agreement, and which are capable of cure by a third person or entity, then the Lender or its assignee shall no longer be in default under this Lease Agreement, and provided that after such change in title or control Town shall continue to receive all benefits due to it as set forth in this Lease Agreement, this Lease Agreement shall continue in full force and effect.

(b) Lender a Third Party Beneficiary. Town agrees and acknowledges that Lender is a third party beneficiary of the provisions of this Section 15.2.

(c) Entry to Consent to Assignment. Town agrees to (i) execute any reasonable consents to assignment or acknowledgements and (ii) provide such opinions of counsel concerning Town's legal status and authority as may be reasonably requested by Company and/or Lender in connection with the financing or sale of the Solar Energy Facility, pursuant to this Section 15.2.

15.3 Modifications of the Agreement for Financing. If a Lender requires this Lease Agreement to be modified, or if Company, in good faith, requires this Lease Agreement to be modified in order to finance the Solar Energy Facility, the parties shall enter into negotiations to amend this Lease Agreement to materially conform to such requirements and to the original intent of this Lease Agreement in a timely manner. If the parties, negotiating in good faith, cannot agree on such amendments, or if Company determines in good faith that this Lease Agreement cannot be amended to allow the Solar Energy Facility to be financed in a commercially reasonable manner, then the terminating party shall give all other parties thirty (30) days prior written notice and this Lease Agreement shall terminate without further liability of the Company to the Town and of the Town to the Company, provided that the Town and Company shall not be released from any payment or other obligations arising under this Lease Agreement prior to such termination.

15.4 Except as otherwise provided herein, the Town hereby subordinates any lien on, interest in, or claim with respect to the Personal Property of Company, which it now has, whether under this Lease Agreement or otherwise, in favor of the security interest of the Lender or a creditor and the Lender and creditor's right in connection therewith including the Lender and creditor's right to take possession of all or any of the Personal Property. The term "**Personal Property**" as used herein, shall mean all of the personal property, including the Solar Energy Facility, of the Company which is now or may hereafter be located on or affixed to the Leased Premises and in which the Lender or creditor now has a security interest securing payment of all or any portion of the obligations of the Company including, without limitation, the obligations of Company to the Lender or creditor under the above-referenced loan(s) and all renewals and extensions thereof.

15.5 The Town agrees that the Personal Property of the Company shall at all times be deemed personal property, even if affixed to the real estate, and the Lender or creditor may, through its authorized officers, representatives and agents, enter upon the Leased Premises at all reasonable times with prior notice to the Town, to inspect, to take possession of, to prepare for auction or private sale and to auction and/or to sell the Personal Property on the Leased Premises or to remove all or any portion of the Personal Property from the Leased Premises; provided, however that Lender or creditor shall, at its sole cost and expense, restore the Leased Premises and surrounding property to its prior condition and pay for any damage that occurs to the Leased Premises or surrounding property as a result of the removal of the Personal Property by the Lender or creditor, its agents or employees.

16.0 Termination of Lease.

16.1 This Lease Agreement will terminate at the expiration of the Term unless renewed or extended for an additional term by agreement of the Town and Company in writing sign by both Parties.

16.2 [Omitted Intentionally]

16.3 Either party may terminate this Lease Agreement for any reason, event or circumstance pursuant to any section hereof that expressly authorizes termination of this Lease Agreement by one or both Parties.

16.4 Termination by Town. Notwithstanding the above or the provisions of Section 15.0, this Lease Agreement may be terminated at any time by the Town without any obligation, liability or penalty to the Town, for the failure of Company:

- (i) To pay the Lease Rent to the Town in accordance with the schedule of payments set forth on Exhibit C within (30) days of notice from the Town.
- (ii) To pay when due all taxes and assessments imposed on the Leased Premises, the Solar Energy Facility and improvements within (30) days of notice from the Town;
- (iii) [Omitted Intentionally]
- (iv) To pay and reimburse the Town for payment of Company obligations paid by the Town pursuant to this Lease Agreement within (30) days of notice from the Town;
- (v) To correct deficiencies, damage to or defective conditions in the Solar Energy Facility or the Leased Premises as required in Section 08.0 of this Lease Agreement within (30) days of notice from the Town;
- (vi) To commence and/or complete the construction of the Solar Energy Facility or any extension, renovation or improvements thereto in accordance with the plans and specifications, including the dates of commencement and completion of the construction, as mutually agreed by the Parties;
- (vii) To correct or cure any other material breach of the terms and conditions of this Lease Agreement, within thirty (30) days from the date of notice of said breach from the Town.

16.5 In such event, the Town shall provide to Company a written notice of intent to terminate the Lease Agreement and NMCSA specifying the effective date of termination, the reasons therefore, and providing a reasonable cure period, that will allow Company an opportunity to correct the failure or breach prior to the effective date of termination which period shall not, however, exceed thirty (30) days. The effective date of termination may be any date following the expiration of the cure period specified in the notice of intent to terminate.

16.6 A copy of the notice of intent to terminate the Lease Agreement shall, where applicable, be sent to the approved Lender or secured creditor on the same date as it is provided to Company to allow the approved Lender or secured creditor an opportunity to correct the failure or breach prior to the effective date of termination.

16.7 In the event the failure or breach has not been corrected or cured prior to the effective date of termination, Company shall peaceably surrender the Leased Premises to the Town on the effective date of termination together with a proposed plan for the disposition of the Solar Energy

Facility which plan may, subject to Town approval, include the sale or Lease of the Solar Energy Facility to some other Company, approved by the Town. In addition to any other right or remedy available to the Town for breach of this Lease Agreement, the Town shall be entitled to specific performance of the provisions of this Section 16.7.

16.8 Subject to the rights of Lender or creditor set forth in Section 15, this Lease Agreement may also be terminated without liability or penalty by (i) the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of its debts, by or against the Company; (ii) the making of an assignment for the benefit of creditors by the Company; (iii) the Company's dissolution or ceasing to do business, or (iv) the abandonment of the Solar Energy Facility and Leased Premises by the Company.

16.9 Subject to the rights of Lender or creditor set forth in Section 15, this Lease Agreement may also be terminated, subject to the provisions of Section 8.3 of this Lease Agreement and Section 2.2 of the NMCSA, without payment, liability or penalty for the failure or inability of the Company to construct and maintain a new Solar Energy Facility on the Leased Premises in the event that the existing Solar Energy Facility is destroyed or to repair and maintain the existing Solar Energy Facility if it is damaged at any time during the term of this Lease Agreement in accordance with the plans and specifications approved by the Town. In either event, the Company shall immediately secure the destroyed or damaged Solar Energy Facility in accordance with applicable laws, regulations and ordinances.

17.0 Force Majeure. If either party shall be unable to carry out any of its obligations under this Lease Agreement due to events beyond the reasonable control of and without the fault or negligence of the party claiming force majeure, including without limitation, an act of God, sabotage, accidents, appropriation or diversion of steam energy, equipment, materials, or commodities by order or rule of any governmental authority having jurisdiction thereof, any changes in applicable laws or regulations affecting performance, any act of governmental or judicial authority, war, blockage, insurrection, riot, fire, explosion, flood, nuclear emergency, epidemic, lightning, hurricane, earthquake or similar catastrophic occurrence, this Lease Agreement shall remain in effect, but the effected party's obligation shall, subject to the limitations set forth below, be suspended without liability for the period during which the effected party is unable to perform because of the disabling circumstances.

17.1 The party claiming force majeure must give the other party prompt written notice describing the particulars of the force majeure, including without limitation, the reasons why it effects or prevents performance, the nature of the occurrence and its expected duration.

17.2 The suspension of performance as provided herein shall be of no greater scope and of no longer duration than is required by the force majeure.

17.3 The non-performing party uses its best efforts to remedy its inability to perform notwithstanding the occurrence of a force majeure event.

17.4 The obligations of either party that arose before the force majeure causing suspension of performance shall not be excused as a result of the force majeure.



19.4 No amendments or modifications to this Lease Agreement shall be valid unless contained in writing and signed by all parties.

19.5 No waiver of any term or condition of this Lease Agreement or its performance shall be valid unless contained in writing and signed by the party who is claimed to have waived such term, condition or performance. The failure to insist upon the strict performance of any provision of this Lease Agreement or to exercise any right or remedy set forth herein shall not constitute a waiver or relinquishment of said right or remedy. The waiver of any breach of any term or condition of this Lease Agreement shall be limited to the particular instance and shall not operate as a waiver of any future breaches of the same or any other term or condition of this Lease Agreement.

19.6 This instrument shall not be construed nor shall it operate to grant to Company anything other than a Lease in the Leased Premises and shall, not under any circumstances, be construed or operate to grant to Company any interest in land relating to the Leased Premises or any other land owned by the Town.

19.7 If any provision of this Lease Agreement shall be invalid or unenforceable, the remainder of this Lease Agreement shall not be affected and each term and condition of this Lease Agreement shall be valid and enforceable to the fullest extent permitted by law.

19.8 Each of the parties have had an opportunity to fully review the terms and conditions of this Lease Agreement with counsel of their choosing and hereby agree that it shall not be construed against the party who drafted this Agreement.

19.9 This Lease Agreement shall be binding upon the parties hereto, their respective approved successors and assigns.

19.10 This Lease Agreement is governed by the laws of the State of New Hampshire without application of its conflict of law.

19.11 This instrument contains the entire agreement of the parties with regard to its subject matter and purpose as set forth in this Lease Agreement and is not subject to any agreements, representations, or promises not expressly set forth herein other than the NMCSA referenced herein which shall prevail and control over any conflicting term or condition set forth herein.

19.12 Company agrees not to record this Lease. Each Party hereto agrees, on the request of the other, to execute a notice of lease, reasonably acceptable to both parties, in recordable form and complying with applicable law (and any amendment thereto that may be necessitated by the final configuration of the Leased Premises). In no event shall such document set forth the rent or other charges payable by Company under this Lease; and any such document shall expressly state that it is executed pursuant to the provisions contained in this Lease, and is not intended to vary the terms and conditions of this Lease. At Town's request, promptly upon expiration of or earlier termination of the Lease Term, Company shall execute and deliver to Town a release of any document recorded in the real property records for the location of the Leased Premises evidencing this Lease, and Company hereby irrevocably appoints Town as Company's attorney-in-fact, coupled

with an interest, to execute any such document if Company fails to respond to Town's request to do so within ten (10) business days. The obligations of Company under this section shall survive the expiration or any earlier termination of this Lease. All costs of such recording shall be borne by Company.

19.13 This Lease Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single Lease Agreement. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures and deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Lease Agreement.

*[Signature page to follow]*

IN WITNESS WHEREOF, the parties have caused this Lease Agreement and a duplicate hereof, to be executed on the day and year first above written.

TOWN OF HUDSON, NEW HAMPSHIRE

\_\_\_\_\_  
Witness

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

KEARSARGE HUDSON LLC  
By: Its Manager, Kearsarge Solar LLC

\_\_\_\_\_  
Witness

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

**EXHIBIT A**  
**LEASED PREMISES**

**[To be inserted]**

**EXHIBIT B**  
**SOLAR ENERGY FACILITY**

**An approximately 4.077 MW DC / 3.168 MW AC solar facility using fixed tilt racking.**

**EXHIBIT C**  
**LEASE RENT**

**Annual Rent shall be updated based on the as built DC size of the Solar Energy Facility and is subject to a 2.25% annual escalation.**

**[To be inserted]**