

RESOLUTION 2021 – 104

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, STATE OF NEW JERSEY, (A) AUTHORIZING AND CONSENTING TO THE SALE OF MT. ARLINGTON I SOLAR, LLC TO A SUBIDIARY OWNED BY GREENBACKER RENEWABLE ENERGY COMPANY, LLC; (B) AUTHORIZING AND CONSENTING TO A FINANCING INVESTMENT THEREIN BY A SUBSIDIARY OWNED BY MORGAN STANLEY RENEWABLES, INC., AND OTHER ASSOCIATED LENDER LOANS CONTEMPLATED THEREWITH; AND, (C) AUTHORIZING THE EXECUTION OF AN ESTOPPEL AGREEMENT, MEMORANDUM OF LEASE AND OTHER DOCUMENTATION REASONABLY NECESSARY TO EFFECTUATE THE SAME

WHEREAS, the Borough of Mount Arlington in the County of Morris, New Jersey (the "Borough"), is a municipality of the State of New Jersey which among other things, exercises powers pursuant to the New Jersey Local Housing and Redevelopment Law, *N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law"); and

WHEREAS, pursuant to the Redevelopment Law, the Borough has designated Block 8, Lot 3 on the Tax Maps of the Borough, better known as the former Mt. Arlington Landfill, as an "area in need of redevelopment" (the "Redevelopment Area") in accordance with the Redevelopment Law; and

WHEREAS, pursuant to the Redevelopment Law, the Borough has adopted the Mount Arlington Landfill Redevelopment Plan (the "Redevelopment Plan") in accordance with the Redevelopment Law; and

WHEREAS, pursuant to a Request for Proposals (the "RFP"), soliciting responses from redevelopers interested in the redevelopment of the Redevelopment Area, the Borough designated HESP Solar, LLC ("HESP Solar") as the redeveloper of the Redevelopment Area, and has entered into a Redevelopment Agreement dated May 17, 2019, as amended by Amendment 1 to Redevelopment Agreement dated April 6, 2021 (as the same may be further amended and supplemented from time to time, together, the "Redevelopment Agreement"), a Ground Lease Agreement dated March 28, 2017, as amended May 17, 2019 (as the same may be further amended and supplemented from time to time, together, the "Ground Lease Agreement"), with HESP Solar and a Solar Power Energy Services Agreement (as the same may be amended and supplemented from time to time, the "Power Purchase Agreement" and, together with the Redevelopment Agreement and the Ground Lease Agreement, the "Agreements") with HESP Solar; and

WHEREAS, pursuant to the Redevelopment Agreement, HESP Solar has agreed to undertake the following actions in accordance with the terms of the Redevelopment Agreement and the Redevelopment Plan: (i) design, develop, finance, construct, operate and maintain a grid-connected photovoltaic solar power system in the Redevelopment Area with an output of approximately 1.6 megawatts (MW) (direct current) of power, including but not limited to all solar energy panels, mounting systems, carports, tracking devices, inverters, switches, meters, conduits, wires, controls, integrators, security systems and other related equipment and components installed in the Redevelopment Area, electric lines and conduits required to connect

such equipment to the delivery point, protective and associated equipment, improvements, and other tangible and intangible assets, contracts, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of same (the "System"); and (ii) construct all necessary on- and off-site infrastructure improvements (as more specifically described in the Redevelopment Agreement, the "Project"); and

WHEREAS, pursuant to the Ground Lease Agreement, and in accordance with the terms of the Redevelopment Plan and the RFP, the Borough agreed to lease the Redevelopment Area to HESP Solar, solely for the purpose of permitting HESP Solar to construct and operate thereon the Project, and conduct activities accessory to and related with such use, including, without limitation, the generation and sale of Energy (as defined in the Ground Lease Agreement); and

WHEREAS, pursuant to the Power Purchase Agreement, the Borough agreed to purchase Electricity Generated (as defined in the Power Purchase Agreement) from HESP Solar for a term of 15 years and HESP Solar agreed to act as Energy Agent (as defined in the Power Purchase Agreement) to schedule and coordinate the sale of Electricity Generated to the PJM (as defined in the Power Purchase Agreement) wholesale markets at the direction of the Borough and at the Energy Agent's sole cost and expense (the "Scheduling Services"); and

WHEREAS, on April 6, 2021, the Borough adopted a resolution consenting to the assignment of the Agreements from HESP Solar to Mt. Arlington I Solar, LLC (the "Project Company"), an affiliate of HESP Solar, in accordance with the terms of the Agreements; and

WHEREAS, subsequent to all of the forgoing, (i) HESP Solar has agreed to sell the Project Company to an indirect subsidiary of Greenbacker Renewable Energy Corporation ("Greenbacker"), and Morgan Stanley Renewables Inc., a Delaware corporation (together with its successors and assigns, the "Investor"), has agreed to acquire certain membership interests of the direct parent company of the Project Company, and (ii) Fifth Third Bank, National Association, in its capacity as administrative agent (the "Agent") for certain lenders (the "Lenders"), has agreed to provide loans to an indirect parent company of the Project Company (collectively, the "Investment"); and

WHEREAS, the Investment is a tax equity and debt transaction relating to the Project as aforementioned; and

WHEREAS, the Borough has been provided with written *indicia* and other necessary documentation assuring it that Greenbacker - as contemplated by the sale of the Project Company to it, and the Investment - is qualified to undertake the obligations of HESP Solar and the Project Company under the Agreements; provided, that, HESP Solar will continue to act as Energy Agent under the Power Purchase Agreement and undertake the Scheduling Services until such time as the Borough consents to the appointment of a new Energy Agent in the Borough's sole discretion; and

WHEREAS, consistent with the foregoing and to the extent required by the terms of the Agreements, the Borough desires to consent to and authorize the sale of the Project Company and the Investment, all as aforesaid; and

WHEREAS, in order to effectuate the foregoing sale and in connection with the Investment, the Borough has been asked to execute an Estoppel Agreement (in the form on file in the office

of the Borough Clerk, the "Estoppel Agreement"), a Memorandum of the Ground Lease Agreement (in the form on file in the office of the Borough Clerk, the "Memorandum of Lease") and other documents as may be reasonably required in connection with the sale, the Investment and the Borough's consent thereto and authorization thereof, including an amendment to the Power Purchase Agreement or execution of such other agreement between, among others, the Borough and HESP Solar as Energy Agent, in either event, memorializing HESP Solar's continued role as Energy Agent under the Power Purchase Agreement until such time as the Borough consents to the appointment of a new Energy Agent in the Borough's sole discretion (such amendment or other agreement being hereafter referred to as the "Energy Agent Agreement"), and the Borough is desirous of entering into the Estoppel Agreement, Memorandum of Lease and other such necessary documents, in such form as may be approved and authorized by Mayor in consultation with the Borough Attorney, including the Energy Agent Agreement; and

WHEREAS, the Borough Council wishes to adopt this resolution to authorize, consent to, and memorialize all of the foregoing.

BE IT RESOLVED, BY THE BOROUGH COUNCIL OF THE BOROUGH OF MOUNT ARLINGTON, IN THE COUNTY OF MORRIS, NEW JERSEY, AS FOLLOWS:

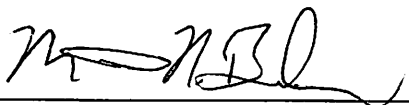
Section 1. The above Recitals are incorporated herein by reference as if set forth in full herein.

Section 2. To the extent required by the terms of the Agreements, the Borough hereby approves, consents to and authorizes the sale of the Project Company to Greenbacker, and otherwise approves, consents to and authorizes the undertaking of the Investment in connection therewith, including both the investment of the Investor therein, and the Lenders making loans to an indirect parent company of the Project Company to effectuate the same.

Section 3. The Borough Council further authorizes and directs such Borough personnel as may be necessary, including the Mayor, Business Administrator and Clerk, to execute the Estoppel Agreement and Memorandum of Lease, and such other documents as may be reasonably required in connection with the sale of the Project Company, the Investment (and the Borough's consent thereto) and HESP Solar's continued role as Energy Agent, in such forms as may be approved and authorized by Mayor in consultation with the Borough Attorney, including the Energy Agent Agreement. The foregoing Borough officers are hereby further authorized and directed to do all things necessary to implement the transactions contemplated by this resolution.

Section 4. This resolution shall take effect immediately.

I HEREBY CERTIFY this to be a true and correct Resolution of the Mayor and Council of the Borough of Mount Arlington and adopted on October 5, 2021.



Matthew N. Bansch, Borough Clerk

PREPARED BY:

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (“**Memorandum**”) is made and entered into this _____ day of October, 2021, by and between Mt. Arlington Solar 1, LLC, a New Jersey limited liability company (“**Tenant**”) and the **Borough of Mount Arlington in the County of Morris, New Jersey**, a public body corporate and politic of the State of New Jersey, having its offices at 419 Howard Boulevard, Mount Arlington, New Jersey 07856 (“**Landlord**”).

WITNESSETH:

1. In consideration of the rent reserved and the covenants, agreements, terms and conditions contained in that certain Ground Lease entered as of March 28, 2017 (“**Effective Date**”) between HESP Solar LLC (“**Original Tenant**”), and Landlord (the “**Original Lease**”), Landlord leased to Original Tenant certain premises within the Borough of Mount Arlington as depicted on the map attached hereto as **Exhibit A**.

2. Landlord and the Original Tenant entered into Amendment No. 1 to the Ground Lease dated as of May 17, 2019 (the “**Amendment**”) on the terms and conditions stated therein (the Amendment together with the Original Lease, the “**Lease**”).

3. The term of the Lease commenced on the Effective Date and runs for a period ending on the twenty-fifth (25th) anniversary of the Commercial Operations Date, as said term is defined in the Original Lease.

4. On April 6, 2021 by Resolution 2021-57, the Borough Council of the Borough of Mount Arlington consented to the assignment of the Lease from Original Tenant to Tenant.

5. On [_____] Original Tenant assigned the Lease to Tenant.

6. This Memorandum is executed in simplified short form for the convenience of the parties and for the purpose of recording the same; and this Memorandum shall not have the effect of in any way modifying, supplementing, or abridging said Lease or any of its provisions, as the same are now or may hereafter be in force and effect. In the event of any inconsistencies between this Memorandum and the Lease, the provisions in the Lease shall prevail.

IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Memorandum as of the day and year first above written.

LANDLORD:

**BOROUGH OF MOUNT
ARLINGTON, IN THE COUNTY
OF MORRIS, NEW JERSEY**

ATTEST:

By: _____

By: _____

Michael Stanzilis, Mayor

**TENANT:
LLC**

MT. ARLINGTON SOLAR 1,

WITNESS:

By: _____

By: _____

STATE OF NEW JERSEY
SS:
COUNTY OF MORRIS

I CERTIFY that on _____, 2021, Michael Stanzilis personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as Mayor of the Borough of Mount Arlington, in the County of Morris, New Jersey; and,
- (c) executed this instrument as the act of the Borough of Mount Arlington, in the County of Morris, New Jersey.

Subscribed and sworn to before me on the _____ day of _____, 2021

Notary Public

STATE OF NEW JERSEY
SS:
COUNTY OF _____

I CERTIFY that on _____, 2021, _____ personally came before me and stated to my satisfaction that this person (or if more than one, each person):

- (a) was the maker of the attached instrument;
- (b) was authorized and did execute this instrument as authorized officer of Mt. Arlington Solar 1, LLC, a New Jersey limited liability company; and,
- (c) executed the instrument as the act of Mt. Arlington Solar 1, LLC.

Subscribed and sworn to before me on the _____ day of _____, 2021

Notary Public

Record and return to:

EXHIBIT A – MAP OF LEASED PREMISES

Estoppel Agreement – Mount Arlington

Solar Power Energy Services Agreement, Ground Lease and Redevelopment Agreement

___, 2021

This Estoppel Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Estoppel”), dated as of October ___, 2021, is entered into by and between the Borough of Mount Arlington, located in the County of Morris and State of New Jersey (together with its successors, designees and assigns, “Counterparty”) and Mt. Arlington Solar 1, LLC, a New Jersey limited liability company (together with its successors, designees and assigns, “Project Company”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Agreements described below.

RECITALS

WHEREAS, Counterparty and Project Company (by assignment from its parent, HESP Solar LLC) are parties to: (i) the Solar Power Energy Services Agreement, dated as of September 1, 2020 (as amended, modified or supplemented from time to time, the “SPESA”), (ii) the Ground Lease for Mount Arlington Redevelopment of Former Sanitary Landfill, dated as of March 28, 2017, as amended by Amendment 1 dated as of May 17, 2019 (as amended, modified or supplemented from time to time, the “Ground Lease”), and (iii) the Redevelopment Agreement dated as of May 17, 2019, as amended by Amendment 1 to Redevelopment Agreement dated as of April 6, 2021 (as amended, modified or supplemented from time to time, the “Redevelopment Agreement”), together with the Ground Lease and SPESA, the “Agreements”) in connection with the approximately 2257.35 kW DC solar electric generation facility being developed by the Project Company in Mount Arlington, New Jersey (the “Facility”); and

WHEREAS, (i) HESP Solar LLC has agreed to sell the Project Company to an indirect subsidiary of Greenbacker Renewable Energy Corporation and Morgan Stanley Renewables Inc., a Delaware corporation (together with its successors and assigns, “Investor”), has agreed to acquire certain membership interests of the direct parent company of Project Company, and (ii) Fifth Third Bank, National Association, in its capacity as administrative agent (“Agent”) for certain lenders (the “Lenders”) have agreed to provide loans to an indirect parent company of Project Company (collectively, the “Investment”); and

WHEREAS, the Investment is a tax equity and debt transaction relating to the Facility.

1. Representations and Warranties and Certain Covenants

(a) Counterparty hereby represents and warrants to Project Company and Lenders, Agent, and Investor (collectively, the “Reliance Parties”) as follows:

(1) To the best of its knowledge, information and belief, the Facility meets all design requirements set forth in the Agreements, and Counterparty has provided all approvals related to the design of the Facility to which Counterparty is entitled under the Agreements.

(2) The execution, delivery and performance of this Estoppel has been duly authorized by Counterparty.

(3) Counterparty has all requisite power and authority to execute and deliver, and to perform its obligations under the Agreements.

(4) This Estoppel constitutes the legal, valid and binding obligation of Counterparty, enforceable against it in accordance with its terms, except to the extent limited by bankruptcy, insolvency or other similar laws relating to the rights of creditors, or by general principles of equity, and except to the extent limited or otherwise required by the terms of the Agreements.

(5) To the best of its knowledge, information and belief, the Agreements are in full force and effect as of the date hereof.

(6) To the actual knowledge of Counterparty, there are not presently any disputes or any legal proceedings between Counterparty and Project Company relating to the Agreements.

(7) The execution, delivery and performance of the Agreements and this Estoppel by Counterparty, to the actual knowledge of Counterparty, do not and will not require any further authorizations, consents or approvals or filings with any entity or person which have not been obtained or made, or violate or conflict with any provision of any law, regulation, order, permit, license, rule, judgment, injunction, or similar matters or breach any agreement, any material indenture, contract or organizational document presently in effect with respect to or binding on Counterparty, or any properties to which Counterparty may be bound.

(8) To the best of its knowledge, information and belief, all government approvals necessary for the execution, delivery and performance by Counterparty of its obligations under the Agreements have been obtained and are in full force and effect, except those governmental approvals routinely obtained during the ordinary course of business and which are not currently required for Counterparty to perform its obligations under the Agreements.

(9) To the actual knowledge of Counterparty, there is no litigation, action, suit, proceeding or investigation at law or in equity relating to the Agreements by or before any governmental authority, arbitral tribunal or other body now pending against Counterparty or, to the actual knowledge of Counterparty, threatened against or affecting Counterparty that (i) questions the validity, binding effect or enforceability hereof or of the Agreements against Counterparty, or any action taken or to be taken pursuant hereto or thereto or any transactions contemplated hereby or thereby, (ii) could have a materially adverse effect on the performance of the obligations hereof or of the Agreements by Counterparty or the condition (financial or otherwise), business, or operation of Counterparty; or (iii) could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made.

(10) No Agreements have been amended, supplemented or modified since the respective dates of their execution, other than as indicated herein, including as indicated in the Recitals above.

(11) The Agreements are the only contracts between Project Company and Counterparty with respect to the Project and the subject matter of this Estoppel.

(12) Counterparty has not transferred or assigned any interest in the Agreements, or, to the best of its knowledge, information and belief, received notice of any assignment by Project Company of the Agreements (other than the assignment from HESP Solar LLC to the Project Company acknowledged herein). Counterparty further consents to the contemplated future sale of the membership interest of Project Company by HESP Solar LLC to a purchaser to be owned indirectly by Investor and an affiliate of Greenbacker Renewable Energy Corporation, all as contemplated hereby.

(13) To the actual knowledge of Counterparty, neither Party is in default of any of its obligations under the Agreements or has breached any representation, warranty or covenant under the Agreements.

(14) To Counterparty's knowledge, (a) no event of force majeure exists under the Agreements; and (b) no event or condition exists which, with the passage of time or the giving of notice or both, would constitute a default or breach by either party or enable either party to terminate or suspend its obligations under the Agreements.

(15) To the best of its knowledge, information and belief, all payments accrued by or due to or from Project Company under the Agreements through the period ending on the date hereof have been paid.

(b) Counterparty and Project Company hereby further acknowledge and agree that:

(1) Project Company, each Reliance Party, and their respective successors and assigns, and their potential equity investors, lenders and participants, and their respective successors and assigns shall be entitled to rely upon the certifications contained herein by Counterparty.

(2) Counterparty confirms that, at the time this Estoppel is executed, it has no right to terminate the Redevelopment Agreement pursuant to Section 12.01 thereof, the Ground Lease pursuant to Section 9.1 thereof or the SPESA pursuant to Section 7.2 thereof.

(3) Counterparty agrees to simultaneously deliver to Investor and Agent, at the addresses provided on Schedule I hereto, a copy of any material notice, including without limitation default or termination notices, delivered to Project Company under the Agreements. Counterparty agrees that no right of Counterparty to terminate or suspend its obligations under the Agreements (a "Termination Event") will become effective under the Agreements, unless it first provides written notice thereof to Investor and Agent, and neither Investor nor Agent have cured such Termination Event within the same cure period afforded to Project Company under the Agreements. Any curing of or attempt to cure any Termination Event shall not be construed as an assumption by either Investor or Agent of any covenants, agreements or obligations of Project

Company under or in respect of the Agreements, unless any such covenants, agreements or obligations are affirmatively and expressly assumed in accordance with the terms of the respective Agreements.

(4) The Parties acknowledge that the Guaranteed Output set forth in Exhibit E of the SPESA was based on a System size of 2281.5 kW DC, and that the actual System size is 2257.35 kW dc, and therefore Exhibit E shall be updated as follows:

Year	Estimated Output (kWhr/Year)	Guaranteed Output (kWhr/Year)
1	2,840,439	2,556,395
2	2,826,237	2,543,613
3	2,812,106	2,530,895
4	2,798,045	2,518,240
5	2,784,055	2,505,649
6	2,770,134	2,493,121
7	2,756,284	2,480,655
8	2,742,502	2,468,252
9	2,728,790	2,455,911
10	2,715,146	2,443,631
11	2,701,570	2,431,413
12	2,688,062	2,419,256
13	2,674,622	2,407,160
14	2,661,249	2,395,124
15	2,647,943	2,383,148

2. Governing Law

THIS ESTOPPEL SHALL BE GOVERNED BY AND CONSTRUED UNDER THE LAWS OF THE STATE OF NEW JERSEY, AND WITHOUT REFERENCE TO CONFLICTS OF OR CHOICE OF LAWS PRINCIPLES.

3. Successors and Assigns

This Estoppel shall be binding upon and inure to the benefit of the Project Company, each Reliance Party and their permitted successors and assigns (which assigns, in the case of any Reliance Party, shall be any nominee or designee of such entity).

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IN WITNESS WHEREOF, the undersigned duly execute this Estoppel as of the date first above written.

Borough of Mount Arlington,

as Counterparty

By: _____

Name: Michael Stanzilis

Title: Mayor

Mt. Arlington Solar 1, LLC,

as Project Company

By: _____

Name: Susan Brodie

Title: Authorized Representative

SCHEDULE I

Investor Notice Address

Morgan Stanley Renewables Inc.
c/o Morgan Stanley
1585 Broadway, Floor 4
New York, NY 10036
Attn: Jorge Irigorri
Facsimile: 212 507-3547
Email: Jorge.Irigorri@morganstanley.com

With a copy to:

Morgan Stanley Renewables Inc.
c/o Morgan Stanley
1585 Broadway, Floor 4
New York, NY 10036
Attn: Darren Ho
Facsimile: 212-507-4084
Email: darren.ho@morganstanley.com

Agent Notice Address

Fifth Third Bank, National Association, as Administrative Agent
201 N. Tryon Street, Suite 1700
Mail Drop: NFT17A
Charlotte, North Carolina 28202
Attention: Portfolio Management
Email: Natalie.Trojan@53.com; Adam.Smith2@53.com