

**RESOLUTION OF THE BOARD OF COMMISSIONERS  
MORRIS COUNTY IMPROVEMENT AUTHORITY**

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**TITLE:**

**RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY  
AUTHORIZING THE SETTLEMENT OF VARIOUS LITIGATIONS AND THE  
AMENDMENT OF PROGRAM DOCUMENTS, ALL IN CONNECTION WITH  
THE AUTHORITY'S RENEWABLE ENERGY PROGRAM**

**WHEREAS**, the Morris County Improvement Authority (including any successors and assigns, the "*Authority*") has been duly created by resolution duly adopted by the Board of Chosen Freeholders (the "*Board of Freeholders*") of the County of Morris (the "*County*") in the State of New Jersey (the "*State*") as a public body corporate and politic of the State pursuant to and in accordance with the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, and the acts amendatory thereof and supplemental thereto (the "*Act*"), and other applicable law;

**WHEREAS**, pursuant to that certain guaranty ordinance finally adopted on May 11, 2011, as amended and supplemented, all in accordance with Section 37 of the Act (N.J.S.A. 40:37A-80) and other applicable law (the "*Guaranty Ordinance*"), the County authorized issuance of bonds in a not to exceed amount of \$60,000,000 to finance all costs in connection with the Renewable Energy Program;

**WHEREAS**, pursuant to that certain resolution number 11-31 entitled "RESOLUTION AUTHORIZING THE ISSUANCE OF COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM LEASE REVENUE NOTES AND BONDS, SERIES 2011 AND ADDITIONAL BONDS OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY" adopted by the governing body of the Authority on July 20, 2011, as amended and supplemented from time to time in accordance with its terms, including by Certificates of an Authorized Officer of the Authority dated December 8, 2011 and May 15, 2012, (collectively, and as the same may be further amended or supplemented in accordance with its terms, the "*Original Bond Resolution*"), the other "Program Documents" as defined in the Original Bond Resolution (the "*Original Program Documents*"), the Act and other applicable law, the Authority issued its (i) "County of Morris Guaranteed Renewable Energy Program Lease Revenue Bonds, Series 2011A (Federally Taxable)" dated December 8, 2011, in the aggregate principal amount of \$33,100,000 (the "*Series 2011A Bonds*") and its (ii) "County of Morris Guaranteed Renewable Energy Program Lease Revenue Note, Series 2011B (Federally Taxable)" dated May 15, 2012, in the aggregate principal amount of

\$1,200,000 (the “*Series 2011B Note*”, and together with the Series 2011A Bonds, the “*Series 2011 Bonds*”), which Series 2011B Note is held in its entirety by the County, to finance the Renewable Energy Projects (as defined in the Original Bond Resolution, as amended to date by the hereinafter defined Prior Consents (the “*Prior Bond Resolution*”));

**WHEREAS**, certain capitalized terms herein not otherwise defined herein relating to the Series 2011 Bonds, for all purposes herein, shall have the meanings ascribed to such terms in the Prior Bond Resolution, and if not defined therein, in the hereinafter defined Consent No. 3, a form of which is attached hereto as Exhibit A;

**WHEREAS**, for certain purposes herein, including reference to the Prior Consents and Consent No. 3, (i) the Authority, the County and the Trustee are each a “*County Party*,” and may be collectively referred to as the “*County Parties*”, (ii) SunLight General Morris Solar, LLC (the “*Company*”), the Investment Company, the Holding Company, and SLG Capital (as such terms are defined in the hereinafter defined Consent No. 3) are each a “*Company Party*,” and may be collectively referred to as the “*Company Parties*”; (iii) each of the County Parties and the Company Parties shall be considered Parties;

**WHEREAS**, the Company was selected by the Authority through a competitive process to develop the respective Renewable Energy Projects for the Series 2011 Local Units detailed in the Original Program Documents within the timeframe set forth in the Original Program Documents;

**WHEREAS**, the Company, in turn, prior to the issuance of the Series 2011 Bonds, entered into the engineering, procurement, and construction contract (the “*EPC Contract*”) with Power Partners Mastec, LLC (“*Mastec*” or the “*EPC Contractor*”), for the EPC Contractor to construct the Renewable Energy Projects and undertake certain other functions set forth in the EPC Contract;

**WHEREAS**, the Company failed to cause the construction of all of the Renewable Energy Projects within the original timeframes contemplated by the Original Program Documents due to a series of disputes arising between the Company and the EPC Contractor under the EPC Contract (the “*EPC Contract Disputes*”);

**WHEREAS**, in accordance with the terms of the EPC Contract, the Company and the EPC Contractor entered into a private, binding arbitration proceeding (as more particularly defined in the hereinafter defined Settlement Agreement, the “*Arbitration*”) to resolve the EPC Contract Disputes, which Arbitration did not involve any County Party (in accordance with the terms of the EPC Contract), and the details and progression of which (other than occasional schedule updates provided by the Company) were not made available to the County Parties;

**WHEREAS**, in addition, the EPC Contractor filed certain liens on funds held by the Trustee preventing the Company from requisitioning the balance of the proceeds of the Series 2011 Bonds, which prevented the completion of the development of all of the

Renewable Energy Projects, and which actions (among others) resulted in several presently ongoing federal and state court litigation proceedings as detailed in the Settlement Agreement (collectively, the "*Litigation*");

**WHEREAS**, the development timeframes were extended to allow for the Arbitration to conclude, and other related provisions of the Original Program Documents were amended, as set forth in that certain (i) "Amendment and Consent No. 1 (Morris County Renewable Energy Program, Series 2011)" dated as of December 1, 2012 ("*Consent No. 1*") by and among the Parties and the Series 2011 Local Units referenced and defined therein and (ii) "Amendment and Consent No. 2 (Morris County Renewable Energy Program, Series 2011)" dated as of October 1, 2013 ("*Consent No. 2*" and together with Consent No. 1, the "*Prior Consents*") by and among the Parties referenced therein;

**WHEREAS**, the Prior Consents also amended the Original Bond Resolution (as so amended, the "*Prior Bond Resolution*") and the other Program Documents (as so amended, the "*Prior Program Documents*");

**WHEREAS**, on August 15, 2014, a panel of arbitrators issued Findings of Fact and entered Partial Final Arbitrators' Awards in favor of the EPC Contractor against the Company in the amount of \$22,326,738 (the "*Arbitration Award*"), it being understood that such Arbitration Award was a private proceeding not involving, and not issued against, any County Party;

**WHEREAS**, on August 21, 2014, the Authority delivered to the Trustee that certain "Authority Notice Regarding Events of Defaults and other defaults" (the "*Authority Default Notice*"), dated August 21, 2014, which by its terms directed the Trustee to issue to the Company that certain "Trustee Notice Regarding Events of Default and other defaults" (the "*Trustee Default Notice*"), dated August 21, 2014;

**WHEREAS**, the Authority Default Notice, among other things, informed the Company of the Authority's position that the Company: (i) had caused certain Events of Default under the Prior Program Documents; and (ii) was in default with respect to additional obligations pursuant to the Prior Program Documents, which if not timely cured, would accrue into additional Events of Default under the Program Documents (collectively, the "*Defaults*");

**WHEREAS**, in order to resolve all of the Litigation, provide for a workable methodology to deal with the Defaults and allow the Authority's renewable energy program to continue, allow the Authority and the County to determine their best interests relating to the completion of the Renewable Energy Projects, and certain other considerations under the Prior Program Documents, the Authority has determined, through adoption of this resolution and subject to approval of the County pursuant to Section 13 ("*Section 13*") of the Act (N.J.S.A. 40:37A-56), to (i) enter into that certain "Settlement Agreement" by and among, including others, the Authority, the County, the Company, and the EPC Contractor (the "*Settlement Agreement*"), a form of which is attached hereto as Exhibit B, and (ii) further amend the Prior Program Documents (as

amended, including by the hereinafter defined Consent No. 3, the “*Program Documents*”) through the authorization, execution and delivery of that certain “Amendment and Consent No. 3 (Morris County Renewable Energy Program, Series 2011)” (“*Consent No. 3*”, and together with the Prior Consents, the “*Consents*”; collectively, the Settlement Agreement and Consent No. 3 may be collectively referred to as the “*Settlement Documents*”), which Consent No. 3 may be acknowledged by certain Series 2011 Local Units referenced therein;

**WHEREAS**, pursuant to the Settlement Documents, among other things, (i) the EPC Contractor shall be paid for certain Costs of the Renewable Energy Projects as outlined therein from (A) a portion of the Project Fund held by the Trustee, (B) an amount to be funded by the Authority and/or the County through other available funds, and (C) such other sources as detailed in the Settlement Documents; and (ii) the Authority and the County may provide for certain other costs, including Administrative Expenses (collectively, the “*Settlement Project*”);

**WHEREAS**, litigations substantially similar to, and in some cases identical to, the Litigations have also arisen among affiliates of the Company, the EPC Contractor, the Somerset County Improvement Authority, Somerset County, Sussex County, and the Authority in connection with renewable energy programs being implemented in each of Somerset and Sussex Counties (the “*Somerset Litigations*” and the “*Sussex Litigations*,” respectively, and together with the Litigation, collectively the “*Tri-County Litigations*”);

**WHEREAS**, the Authority understands that the governing bodies of each of Somerset and Sussex Counties are scheduled to consider taking action with respect to settling the Somerset Litigations and the Sussex Litigations, respectively, upon terms substantially similar to the Settlement Project;

**WHEREAS**, in order to finance the Settlement Project, the Authority and/or County must appropriate funds from currently available sources;

**WHEREAS**, the Authority has issued \$34,300,000 (aggregate principal amount of the Series 2011 Bonds) of the \$60,000,000 of Authority bonds authorized for County guaranty under the Guaranty Ordinance, leaving guaranty capacity of \$25,700,000 (the “*Excess Guaranty Bonding Capacity*”), which the Authority and County may determine not to utilize to complete construction of the Renewable Energy Projects;

**WHEREAS**, prior to the execution and delivery of Consent No. 3 and the Settlement Agreement, the Authority shall have made a detailed report regarding Consent No. 3 and the Settlement Agreement to the Board of Chosen Freeholders, which report shall include, without limitation, descriptions of the terms of Consent No. 3 and the Settlement Agreement, and which report and amended report shall be accepted by the County by resolution adopted by the Board of Chosen Freeholders pursuant to Section 13; and

**WHEREAS**, the authorization, execution, and delivery of the Settlement Documents, and all other actions contemplated herein, are in the best interest of the Authority.

**NOW THEREFORE BE IT RESOLVED** by the Board of Commissioners of the Authority as follows:

**Section 1.** Subject to consent of the County pursuant to Section 13, the Chairperson and the Treasurer of the Authority (including their designees, each an “Authorized Officer”) are hereby severally authorized to undertake the following actions: (i) execution, delivery, and negotiation of Consent No. 3 and the Settlement Agreement, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, with such changes to Consent No. 3 and the Settlement Agreement from the attached forms as deemed by the Authorized Officer, in his or her sole discretion, to be necessary, desirable, convenient, or in the best interests of the Authority; and (ii) any and all actions deemed necessary, convenient, or desirable by such Authorized Officers, in their sole and reasonable discretion, to effectuate the foregoing and the transactions contemplated thereby, including but not limited to, execution of all such certificates, instruments or documents the Authorized Officer shall deem necessary, convenient or desirable for such purposes, which may include, but not be limited to, amended and restated Program Documents.

**Section 2.** The Authorized Officers are each hereby severally authorized and directed to deliver or cause to be delivered to the governing body of the County a detailed report describing Consent No. 3 and the Settlement Agreement, all in accordance with Section 13.

**Section 3.** Each Authorized Officer is hereby further authorized and directed to take all actions deemed necessary, convenient or desirable by any such Authorized Officer to obtain the resolutions of the governing body of the County contemplated by Section 13 relating to the Settlement Documents.

**Section 4.** All actions of the Authorized Officers, the Authority’s counsel, Pearlman & Miranda, LLC, and its other consultants taken prior to the date of adoption hereof in connection with the Settlement Documents, or any of the foregoing transactions contemplated by this resolution, are hereby ratified and approved.

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**Section 5.** This resolution shall take effect on the date that the last of the governing bodies of the County, the Authority, Somerset County, the Somerset County Improvement Authority, and Sussex County approve settlement of the respective Tri-County Litigations. Notwithstanding the prior sentence, in accordance with N.J.S.A. 40:37A-50, the Secretary of the Authority is hereby authorized and directed to submit to each member of the Board of Freeholders, by the end of the fifth business day following this meeting, a copy of the minutes of this meeting. The Secretary is hereby further authorized and directed to obtain from the Clerk of the Board of Freeholders a certification from the Clerk stating that the minutes of this meeting have not been vetoed by the Director of the Board of Freeholders.

***MOVED/SECONDED:***

**Resolution moved by Commissioner \_\_\_\_\_.**

**Resolution seconded by Commissioner \_\_\_\_\_.**

***VOTE:***

<b>Commissioner</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>
<b>Gallop</b>				
<b>Kovalcik</b>				
<b>Ramirez</b>				
<b>Sandman</b>				
<b>Bonanni</b>				

***ATTESTATION:***

This Resolution was acted upon at a special meeting of the Authority held on March 2, 2015 at the Morris Authority’s principal corporate office in Morristown, New Jersey.

Attested to this 2nd day of March, 2015

**By: \_\_\_\_\_**  
**Secretary of the Morris Authority**

***FORM and LEGALITY:***

This Resolution is approved as to form and legality as of March 2, 2015

**By: \_\_\_\_\_**  
**Stephen B. Pearlman, Esq., Partner**  
**Pearlman & Miranda, LLC**  
**Counsel to the Morris Authority**

**Exhibit A**

**[Attach Form of Consent No. 3]**

**Exhibit B**

**[Attach Form of Settlement Agreement]**