

RESOLUTION NO. 15-11

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

TITLE:

RESOLUTION OF THE MORRIS COUNTY IMPROVEMENT AUTHORITY
AUTHORIZING THE DEFERRAL OF THE MATURITY OF THE AUTHORITY'S
"COUNTY OF MORRIS GUARANTEED RENEWABLE ENERGY PROGRAM
LEASE REVENUE NOTE, SERIES 2011B [FEDERALLY TAXABLE]" IN
CONNECTION WITH THE AUTHORITY'S RENEWABLE ENERGY PROGRAM
AND CERTAIN MATTERS RELATED THERETO

WHEREAS, the Morris County Improvement Authority (the "*Authority*") has been duly created by resolution of the County of Morris (the "*County*"), State of New Jersey (the "*State*") and exists in good standing as a public body corporate and politic under and pursuant to all applicable law, including the county improvement authorities law, constituting Chapter 183 of the Pamphlet Laws of 1960 of the State, as amended from time to time (codified at N.J.S.A. 40:37A-44 et seq., the "*Act*");

WHEREAS, pursuant to the Program Documents (the "*Program Documents*") defined in the hereinafter defined Bond Resolution, including 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 "*Bond Resolution*"), the Act and other applicable law and official action, 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 (the "*Renewable Energy Projects*") defined therein (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 Bond Resolution);

WHEREAS, SunLight General Morris Solar, LLC (the “*Company*”) was selected to develop the respective Renewable Energy Projects under the Program Documents by competitive processes of the Authority and are contractually responsible for repayment of the Series 2011B Note;

WHEREAS, the principal of, and interest on, the Series 2011B Note was originally scheduled to mature on January 15, 2013;

WHEREAS, on November 26, 2012 the Authority requested, and received, permission from the Local Finance Board in the Division of Local Government Services of the State Department Community of Affairs (the “*Local Finance Board*”) pursuant to N.J.S.A. 40A:5A-24 to extend the maturity date of the Series 2011B Note from January 15, 2013 to January 15, 2014;

WHEREAS, on December 18, 2013 the Authority requested, and later received, permission from the Local Finance Board pursuant to N.J.S.A. 40A:5A-24 to extend the maturity date of the Series 2011B Note from January 15, 2014 to January 15, 2015;

WHEREAS, by deferment notices dated January 14, 2015 and February 13, 2015, each of which were delivered to the Trustee, the County as 100% holder of the Series 2011B Note, and the Authority as issuer, agreed to defer payments due on the Series 2011B Note, including the interest thereon, first until February 16, 2015, and then until April 15, 2015, respectively, or until such later date agreed upon by the County and Authority;

WHEREAS, the Company engaged in arbitrations before the American Arbitration Association with the EPC Contractor, Power Partners Mastec, LLC (“*Mastec*”), with respect to the Renewable Energy Projects (the “*Arbitration*”), to which no governmental entity associated with the Renewable Energy Projects was a party;

WHEREAS, 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 federal and state court litigation proceedings involving the Authority (collectively, the “*Litigations*”);

WHEREAS, on August 15, 2014, a panel of arbitrators in the Arbitration 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 arbitrations were private proceedings not involving 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 their its terms directed the Trustee to issue to the Company that certain “Trustee Notice Regarding Events of Default and other defaults” (collectively, the “*Trustee Default Notices*”), 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 Litigations, provide for a workable methodology to deal with the Defaults, and allow the Authority and County to determine their best interests relating to the completion of the Renewable Energy Projects, and certain other considerations under the Prior Program Documents, each of the Authority and County authorized, among other things, the entering of settlement agreements by and among, including others, the Authority, the County, the Company, and the EPC Contractor (the "*Settlement Agreement*"), which became effective on March 3, 2015;

WHEREAS, due to a variety of circumstances, the Company does not have sufficient funds on hand to satisfy its payment obligations under the Series 2011B Note;

WHEREAS, it is in the best interests of the County and Authority to further defer payment in connection with the Series 2011B Note, until such time as the Company has sufficient funds on hand to satisfy such payment obligation or the County and Authority determine to implement an alternative repayment mechanic for the Series 2011B Note, and in any case, repayment of the Series 2011B Note shall remain an obligation of the Company; and

WHEREAS, in the event the Authority ultimately requires approval from the Local Finance Board for any action contemplated herein, the Authority believes: (i) it is in the public interest to accomplish such purpose; (ii) said purpose is for the health, wealth, convenience or betterment of the inhabitants of the County; (iii) the amounts to be expended for said purpose are not unreasonable or exorbitant; and (iv) the proposal is an efficient and feasible means of providing services for the needs of the inhabitants of the County and will not create an undue financial burden to be placed upon the Authority or the County.

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

Section 1. The Authority, as issuer of the 2011B Note, upon receipt of the consent of the County as 100% holder thereof, hereby authorizes the deferment of payment on the Series 2011B Note, including the interest thereon, until June 15, 2015, or until such later date as may be agreed to in writing by the County and the Authority.

Section 2. The Chairperson, Secretary, and the Treasurer of the Authority (including their designees, each an "*Authorized Officer*") are each hereby severally authorized and directed to execute and deliver such certificates, instruments or documents, as deemed necessary, convenient or desirable by the Authorized Officer, in

consultation with counsel, to defer payment on the Series 2011B Note in accordance with Section 1 above.

Section 3. The Authorized Officers are hereby authorized to take all such further actions in accordance with all applicable law, as such Authorized Officers, in consultation with counsel, shall deem necessary, convenient or desirable to defer payment on the Series 2011B Note.

Section 4. The Authorized Officers are further authorized, if determined to be in the best interest of the Authority in such Authorized Officers sole discretion, to take all necessary actions to term out, refund, or further extend the maturity of the Series 2011B Note until January 15, 2016, or such earlier date of redemption as may be practicable, in accordance with all applicable law, including without limitation the filing of documents, or corresponding, with the Local Finance Board, execution of such certificates, instruments or documents, as any such Authorized Officer, in consultation with counsel, shall deem necessary, convenient or desirable by any such Authorized Officer to effectuate the term out, refunding, or extension of the maturity date.

Section 5. If the Authorized Officers, in their sole discretion, decide to term out, refund, or further extend the maturity of the Series 2011B Note in accordance with Section 4 hereof, such Authorized Officers are hereby authorized to take all such further actions in accordance with all applicable law, as such Authorized Officers, in consultation with counsel, shall deem necessary, convenient or desirable to effectuate such term out, refunding, or extension of the maturity date upon terms determined to be in the best interests of the Authority.

Section 6. In the event the Authorized Officers, as permitted by Section 4 hereof, pursue a course of action which requires approval from the Local Finance Board, the Secretary of the Authority is hereby directed at such time to prepare and cause counsel to the Authority to file a copy of this resolution with the Local Finance Board as part of the Local Finance Board Application.

Section 7. In the event the Authorized Officers, as permitted by Section 4 hereof, pursue a course of action which requires approval from the Local Finance Board, the Local Finance Board is hereby respectfully requested to consider the Local Finance Board Application at such time and to record its findings and recommendations as provided by N.J.S.A. 40A:5A-7 of the Local Authorities Fiscal Control Law.

Section 8. The deferment of payment under the Series 2011B Note by the Authority shall not constitute a waiver of, and shall be without prejudice to, any other rights or remedies which may be available to the Authority.

Section 9. Reserved.

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Section 10. Subject to the second sentence of this section, this resolution shall take effect immediately. 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:

Commissioner	Yes	No	Abstain	Absent
Gallopo				
Kovalcik				
Ramirez				
Sandman				
Bonanni				

ATTESTATION:

This Resolution was acted upon at the Special Meeting of the Authority held on April 1, 2015 at the Authority's principal corporate office in Morristown, New Jersey.

Attested to this 1st day of April, 2015

By: _____
Secretary of the Authority

FORM and LEGALITY:

This Resolution is approved as to form and legality as of April 1, 2015

By: _____
Stephen B. Pearlman, Esq., Partner
Pearlman & Miranda, LLC
Counsel to the Authority