

CONSENT AND AGREEMENT

(Site Lease Agreement – Croton DPW Solar Project)

This Consent and Agreement (this “*Consent*”) is made and entered into as of September __, 2022, by and between VILLAGE OF CROTON-ON-HUDSON, a New York municipal corporation (the “*Landlord*”), NATIONAL COOPERATIVE BANK, N.A., a national bank (the “*Lender*”), and ECOGY CROTON COMMUNITY SOLAR LLC, a Delaware limited liability company (the “*Project Company*”).

RECITALS

A. The Project Company is a wholly-owned subsidiary of Ecology NY Holdco I LLC, a Delaware limited liability company, (the “*Borrower*”).

B. The Borrower has entered into that certain Term Loan Agreement, dated as of _____, 2022 (as amended, restated, supplemented, or otherwise modified from time to time, the “*Loan Agreement*”) with the Lender and the other Loan Documents (as defined therein) in order to finance a portion of the costs of the development and construction of a photovoltaic solar electric energy generating facility owned by the Project Company and located at 435 Yorktown Rd., Croton-on-Hudson, New York 10520 (the “*Solar Project*”).

C. Project Company, as Tenant, and Landlord, as Landlord, are parties to that certain Option and Lease Agreement, entered into as of August 8, 2019 and as evidenced by the Memorandum of Option and Lease Agreement recorded on October 22, 2019 with the Office of Westchester County Clerk as Control Number 592253143 (as further amended, restated, supplemented or otherwise modified from time to time, the “*Lease*”) a copy of which is attached as Exhibit A. Any capitalized term used but not defined herein shall have the meaning assigned to such term in the Lease.

D. As part of the transactions contemplated by the Loan Agreement, the Project Company has executed in favor of the Lender a Security Agreement (the “*Security Agreement*”), pursuant to which, Borrower collaterally assigns and grants a security interest to Lender in, among other things, all right, title and interest of the Project Company in, to and under the Assigned Agreements as collateral security for repayment of the loan under the Loan Agreement and certain related obligations as described in the Security Agreement (the “*Secured Obligations*”).

AGREEMENTS

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties do hereby agree as follows:

1. Consent to Assignment. Landlord hereby consents in all respects to the collateral assignment of all of Project Company’s right, title and interest in and to the Lease (the “*Assigned*”

Interest”) and the granting of the security interest in the Solar Project and acknowledges the right of Lender, in the exercise of Lender’s rights and remedies pursuant to the Security Agreement, upon written notice to Landlord, to make all demands, give all notices, take all actions and exercise all rights of Project Company under the Lease.

2. Subsequent Owner. Landlord agrees that, if the Lender notifies Landlord in writing that it has elected to exercise its rights and remedies pursuant to the Security Agreement and the other Loan Documents and replace the Project Company with respect to the Assigned Interest, then (i) the Lender or any assignee and/or designee of the Lender (each, a “*Subsequent Owner*”) shall be substituted for Project Company under the Lease and this Consent and (ii) Landlord shall recognize the Lender or such other Subsequent Owner, as the case may be, as its counterparty under the Lease and this Consent and continue to perform its obligations under the Lease and this Consent in favor of the Lender or such other Subsequent Owner, as the case may be.

3. Notice of Default; Cure Rights. If the Project Company defaults in the performance of any of its obligations under the Lease, Landlord will give written notice of such default to the Lender upon giving notice to the Project Company and shall grant the Lender the opportunity to cure such default within the greater of (a) thirty (30) days of such notice or (b) five business days following the end of the applicable cure period provided to Project Company in the Lease; provided, however, that with respect to non-payment defaults, such cure period may be extended by no more than an additional ninety (90) day period if the Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that (a) if possession of the Solar Project is necessary to cure such non-monetary default and the Lender has commenced proceedings to obtain possession of the Solar Project, Lender shall be allowed a reasonable time to complete such proceedings, and (b) if Lender is prohibited from curing any such non-monetary default by any process, stay or injunction issued by any governmental authority or pursuant to any Bankruptcy or insolvency proceeding or other similar proceeding involving Project Company, then the time periods specified herein for curing a non-monetary default shall be extended for the period of such prohibition. For any non-payment defaults that are by their nature not susceptible of cure by the Lender using good faith diligent efforts, the Lender shall be deemed to have cured such defaults if it commences, within the cure periods noted above, and thereafter diligently prosecutes to completion such actions as are necessary for the Lender (or another Subsequent Owner) to gain ownership and control of the Solar Project.

4. Amendments; Assignments. Landlord agrees that it shall not agree to any amendment, modification, supplement or termination of the Lease (other than a termination of the Lease due to an uncured event of default after expiration of the Lender’s rights to cure under Section 3 hereof), or accept a voluntary termination of the Lease by Project Company as permitted under the Lease, without the prior written consent of the Lender, which consent shall not be unreasonably withheld. Landlord agrees that it shall not assign, pledge or otherwise transfer its interests in the Lease to any other party other than a purchaser of the Property who assumes all of Landlord’s obligations under the Lease and this Consent. The Landlord shall provide prior written notice to Lender of any such transfer.

5. No Obligations Unless Lender Assumes Lease. Landlord acknowledges and agrees that the Lender shall have no liability or obligation under the Lease (or to cure any default under

the Lease) as a result of this Consent or the Security Agreement except during any period in which the Lender is a Subsequent Owner.

6. Direct Payment. If the Landlord is obligated to make any payment to Project Company for any reason in connection with the Lease, Landlord agrees that it will pay all such amounts into an account as specified by the Lender to Landlord in writing with the written consent of the Project Company.

7. Representations and Warranties of Landlord. Landlord hereby represents and warrants, in favor of the Lender, as of the date hereof, that (i) the execution, delivery and performance by Landlord of this Consent and the Lease have been duly authorized by all necessary corporate action on the part of Landlord, (ii) each of this Consent and the Lease is in full force and effect and constitutes the legal, valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, except as the enforceability thereof may be limited by Bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the Lease and this Consent are the only agreements between Project Company and Landlord (and its affiliates) with respect to the Leased Premises or the Solar Project, and all of the conditions precedent to effectiveness under the Lease have been satisfied or waived, (iv) a true and correct copy of the Lease is attached hereto as Exhibit A and the Lease has not been amended, modified or supplemented and no material waivers have been granted thereunder, (v) Landlord is not in default of any of its obligations under the Lease, (vi) to the best of its knowledge, Project Company is not in default of any of its obligations under the Lease, (vii) there are no material disputes between Landlord and Project Company under the Lease, (viii) Landlord has not assigned all or any part of its rights under the Lease and Landlord has no notice of, and has not consented to, any previous assignment by Project Company of all or any part of its rights under the Lease, (ix) to the best of its knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Landlord or Project Company to terminate or suspend its obligations under the Lease, (x) the rent under the Lease is \$25,606.55 per year, escalating by one percent (1%) annually, payable on an annual basis on each May 26, and the rent has been paid in full through May 26, 2022.

8. Replacement Agreement. In the event the Lease is rejected or terminated as a result of any Bankruptcy, insolvency, reorganization or similar proceeding affecting Project Company or any other reason, Landlord will, at the option of the Lender exercised within forty-five (45) days after such rejection or termination, enter into a new lease agreement with the Lender (or its designee or assignee) having identical terms as the Lease (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree); provided that the following conditions shall apply: (i) the term under such new agreement shall be no longer than the remaining balance of the term specified in the Lease and (ii) the Lender (or its designee or assignee) shall be required to cure any then existing payment or performance defaults by Project Company under the Lease (other than any then existing performance defaults which by their nature are incapable of being cured at the time such new agreement is entered into).

9. Lender's Security Interest in Solar Project. The Landlord acknowledges that that Project Company has granted a first priority security interest in the Solar Project to the Lender.

The Landlord acknowledges that the Solar Project is the personal property of Project Company and does not constitute fixtures. The Landlord agrees that upon the exercise of remedies by the Lender with respect to the Solar Project, the Landlord will provide the Lender or any Subsequent Owner access to the Leased Premises and the Solar Project.

10. Waiver of Liens. Landlord hereby disclaims any title to or rights in the Solar Project or any other personal property, fixtures, installations or other property of Project Company (whether or not affixed to the Property) and waives any landlord's lien, encumbrance or other interest therein which Landlord may now or hereafter have or acquire therein under the Lease or applicable law.

11. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) or email (with written confirmation of receipt) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated below (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11.

If to Project Company: Ecogy Croton Community Solar LLC
c/o Ecogy Solar LLC
315 Flatbush Ave, #393
Brooklyn, NY 11217
Attn: Jack Bertuzzi
Email: assetmanagement@ecogyenergy.com

With a copy to: Anthony Lebe
RECL Group
39 Quail Court, Suite #306
Walnut Creek, CA 94596
Email: tlebe@reclgroup.com

If to Landlord: Village of Croton-on-Hudson
Attn: Village Manager
Stanley H. Kellerhouse Municipal Building
1 Van Wyck Street
Croton-on-Hudson, NY 10520

If to Lender: National Cooperative Bank, N.A.
2011 Crystal Drive, Suite 800
Arlington, VA 22202
Attn: Corporate Banking

With a copy to:

Gallagher Evelius & Jones LLP
218 North Charles Street, Suite 400
Baltimore, MD 21201
Attn: Matthew L. Pirnot, Esq.
Email: mpirnot@gejlaw.com

12. Successors and Assigns. This Consent shall be binding upon Landlord and its permitted successors and assigns and shall inure to the benefit of the Lender, its designee(s) and assignee(s) and their respective successors and assigns (including, without limitation, any entity that refinances all or any portion of the Secured Obligations).

13. Termination. This Consent shall terminate upon the satisfaction in full of the Secured Obligations.

14. Amendment of Financing Documents. The Loan Agreement, the Security Agreement, any related financing documents and the security interests granted thereunder may be amended, restated, refinanced (in whole or in part), supplemented or otherwise modified from time to time without Landlord's consent and without affecting the validity or enforceability of this Consent.

15. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law which would result in the application of the laws of another jurisdiction.

16. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.

17. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by the Lender and each other party hereto.

18. Recording. Each party will, at any time upon fourteen (14) days prior written notice from any other Party, execute, acknowledge and deliver to the other a recordable memorandum of this Consent. Any party may record this memorandum in the applicable land records at any time, in its absolute discretion.

19. Counterparts; Rules of Construction. This Consent may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers as of the date first above written.

LANDLORD:

VILLAGE OF CROTON-ON-HUDSON,
a New York municipal corporation

By: _____
Name: _____
Title: _____

[Signature Page to Consent and Agreement – Site Lease (Croton DPW)]

AGREED TO AND ACCEPTED:

LENDER:

NATIONAL COOPERATIVE BANK, N.A.,
a national bank

By: _____
Matthew Wright
Senior Vice President

PROJECT COMPANY:

ECOGY CROTON COMMUNITY SOLAR LLC,
a Delaware limited liability company

By: Ecogy NY Holdco I LLC,
a Delaware limited liability company

By: JB Solar Investors, LLC,
a Connecticut limited liability company

By: _____
John D. Bertuzzi
Managing Member

[Signature Page to Consent and Agreement – Site Lease (Croton DPW)]

**EXHIBIT A
TO CONSENT AND AGREEMENT**

(Site Lease Agreement – Croton DPW Project)

[see attached]

Exhibit A