



THE CORPORATION OF THE MUNICIPALITY OF MORRIS-TURNBERRY

BY-LAW 76 - 2010

“Being a by-law to adopt a Lease Agreement with Sun Saver 2 Limited”

WHEREAS Section 5 of the *Municipal Act, R.S.O. 2001*, as amended, provides that a municipal power shall be exercised by by-law unless the municipality is specifically authorized to do otherwise;

AND WHEREAS Council of the Corporation of the Municipality of Morris-Turnberry deems it expedient to enter into a Lease Agreement with Sun Saver 2 Limited, to authorize the installation of a solar photo system, for the sale of electricity to the Ontario Power Authority;

NOW THEREFORE Council of the Corporation of the Municipality of Morris-Turnberry enacts as follows:

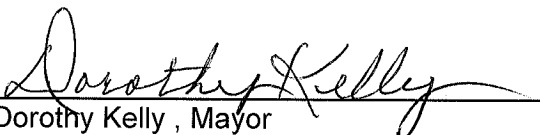
1. That the Lease Agreement with Sun Saver 2 Limited, to authorize the installation of a solar photo system, for the sale of electricity to the Ontario Power Authority, which is attached hereto, is hereby adopted.
2. That the Mayor and Clerk are hereby authorized to sign the Lease Agreement on behalf of the Municipality.
3. This By-law takes effect upon the date of final passing.

Read a First and Second Time

August 24, 2010.

Read a Third Time and Finally Passed

August 24, 2010.


Dorothy Kelly, Mayor


Nancy Michie, Clerk

I, Nancy Michie, Clerk of the Municipality of Morris-Turnberry, hereby certifies that this is a true copy of By-law No. 76-2010 for the Municipality of Morris-Turnberry, duly passed by Council on August 24, 2010.


Nancy Michie, Clerk

LEASE AGREEMENT

THIS AGREEMENT MADE this 20th day of August, 2010.

BETWEEN:

Municipality of Morris-Turnberry

a corporation in **Huron County** in the Province of Ontario

(the "Landlord")

-and-

Sun Saver 2 Limited

a corporation incorporated pursuant to the laws of the Province of Ontario
and having its registered head office in Innerkip, Ontario

(the "Tenant")

WHEREAS the Tenant wishes to install a solar photo system (the "Facility") on a portion of the property of the Landlord for the sole purpose of producing electricity and the subsequent sale of said electricity to the Ontario Power Authority (the "OPA") under the OPA's microFIT Program;

NOW THEREFORE this agreement witnesseth that in consideration of the mutual covenants herein and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties agree as follows:

ARTICLE I GRANT AND TERM

1.01 – Leased Premises. In consideration of the rents, covenants and agreements hereinafter reserved and contained on the part of the Tenant to be paid, observed and performed, the Landlord demises and leases to the Tenant a portion of those certain premises to be constructed on the property by the Tenant and at the Tenant's own cost the Facility, more particularly described in Schedule "A". The said portion of the land owned by the Landlord to be leased to the Tenant shall contain an area of approximately Eighty-One Hundred (8,100) square feet as designated on the site plan and elevation attached as Schedule "B" (the "Leased Premises").

1.02 –Term of Lease. As the sole purpose of this Agreement is to facilitate the Tenant's intention to produce electricity to the OPA under the microFIT Program, and more particularly pursuant to the power purchase agreement (the "PPA") between the OPA and the Tenant, the term (the "Term") of this lease shall consist of the Start Up Period and the Contract Period and will be subject to the parties agreement to renew in section 1.03. For the purposes of this Agreement the following definitions shall apply:

i) Start Up Period. The period of time beginning on the date this Agreement is executed until the date on which the Tenant accepts the microFIT contract offered by the OPA (the "Commencement Date") shall be known as the Start Up Period.

I i) Contract Period. The period of time beginning on the Commencement Date and running for a period of Twenty (20) years shall be known as the Contract Period.

1.03 – Renewal. Provided that neither Party has not defaulted on any of its covenants or requirements pursuant to this Agreement, the Tenant shall have the right to renew the lease for a further term of five (5) years upon the same terms and conditions as contained in this Agreement, save and except that the Rent shall be in an amount mutually agreed to by the parties hereto.

1.04 – Surrender of Premises. The Tenant covenants that, upon the termination of this Agreement, it will leave the Leased Premises in good repair, insurance claims only excepted. The Tenant's obligations to observe or perform this covenant shall survive the expiration or other termination of the Term of this Agreement.

ARTICLE II RENT

2.01 – Rent. The Tenant agrees to make payments (“Rent”) to the Landlord as follows:

i) Start Up Period. The Tenant covenants and agrees to pay to the Landlord on or about the commencement of the Start Up Period a single lump sum payment of Two Hundred and Fifty (\$250.00) Dollars as full payment for the use and access to the Leased Premises during the said Start Up Period.

ii) Years 1-20. The Tenant covenants and agrees to pay to the landlord each and every year for the entire twenty (20) years of the Contract Period an annual amount of One Thousand, Two Hundred Dollars (\$1,200.00) for the Leased Premises. The payment shall be due and payable to the Landlord in lawful money of Canada by the Tenant on or about the anniversary date of the Commencement Date.

2.02 – Failure to Pay Rent. If the Tenant fails to pay, when the same is due and payable, any annual rent payment, the Landlord shall provide the Tenant with written notice of the Tenant’s failure to pay rent. The Tenant shall have five (5) business days to make full payment in accordance with section 2.01 herein before interest shall begin to accrue. Such unpaid amounts bear interest at an annual rate of **twelve (12%)** percent per annum.

ARTICLE III QUIET ENJOYMENT

3.01 – Quiet Enjoyment. The Landlord covenants with the Tenant for quiet enjoyment. The Landlord shall not disturb the Tenant in the conduct of its business.

ARTICLE IV CONDUCT OF BUSINESS BY TENANT

4.01 – Use of Premises. The Tenant further agrees not to carry on any business or sell any item on the Leased Premises which may be illegal or in violation of any zoning or licensing by-law of the local municipality.

4.02 – Improper Use. In the event that the Tenant breaches this covenant in any manner, the Landlord shall have the immediate right to terminate this Agreement and to recover from the Tenant all damages incurred by it as a result of the breach of this covenant including loss of rentals arising as a result of such

termination and/or obtain a restraining order prohibiting such breach. This does not abrogate any of the Landlord's other rights or remedies at law or in equity.

ARTICLE V DUTIES AND RESPONSIBILITIES OF THE LANDLORD

5.01 – The Landlord shall:

- a) provide a leased portion of land with a minimum area of 90 feet x 90 feet as mutually agreed to by the parties,
- b) allow the registration of an easement on the Leased Premises identified herein by the Tenant to allow its representatives to have access to the Facility for the purposes of construction, maintenance and monitoring,
- c) due to the extreme sensitivity of the technology being used at the Facility, acknowledge that it is imperative that the Landlord maintain the property owned by it around the Leased Premises in as much as the property is maintained in the usual manner and that no obstructions are installed on the land adjacent to the Leased Premises so as to cause shading in any manner whatsoever of the Facility,
- d) ensure that the ground where the trenched AC cabling from the Disconnect to the electrical panel is not disturbed,
- e) allow the electrical connection of the Facility to a Point of Common Coupling (“PCC”) to the electrical grid on the Landlord’s property.
- f) allow all AC electrical connections trenched from the Disconnect at the Facility base to the point of connection.
- g) provide “Proof of Site Access” for Tenant’s contractual obligations to the OPA.

ARTICLE VI DUTIES AND RESPONSIBILITIES OF THE TENANT

6.01 – The Tenant shall:

- a) build, commission and maintain the Facility,
- b) obtain all electrical inspection and approvals from the Electrical Safety Authority and obtain the necessary approvals and connection agreement with the Local Distribution Company,
- c) maintain and operate the Facility for the Term,
- d) decommission the Facility after the end of the Term and any subsequent renewal terms, if any,
- e) pay the Landlord the agreed Rent payment pursuant to Article Two of this Agreement for the, entire Term of this Agreement.
- f) construct a fence to deny access to the working components of the tracker.

**ARTICLE VII
MAINTENANCE AND REPAIR OF LEASED PREMISES**

7.01 – Maintenance and Repair by the Tenant. The Tenant covenants with the Landlord that, throughout the Term of this Agreement and any renewals, it shall maintain and repair the whole of the Leased Premises and all fixtures and equipment therein in good order, first class condition and repair, acting reasonably, damage by fire, lightning, flood and tempest only excepted. All alterations, additions and improvements made by the Tenant or made by the Landlord on the Tenant's behalf by agreement or under this Agreement shall remain the property of the Tenant for the Term hereof.

**ARTICLE VIII
INSURANCE**

8.01 – Liability Insurance. The Tenant shall, during the entire Term hereof and any renewals, keep in full force and effect, at its own expense, a policy of public liability and property damage insurance with companies qualified to do business in the Province of Ontario with respect to the leased Premises, in which the limits of public liability shall be in such amount of \$5,000,000 as stipulated by the municipality. This policy will be available for the Municipality to review annually.

8.02 – Indemnification of the Landlord. The Tenant will indemnify the Landlord and save it harmless from and against any and all claims, actions, damages, liabilities and expenses in connection with loss of life, personal injury and/or damage to property arising from or out of any occurrence in, upon or at the Leased Premises, the occupancy or use by the Tenant of the Leased Premises, or any part thereof, or occasioned wholly or in part by any act or omission or negligence of the Tenant, its agents, contractors, employees, servants, licensees or invitees. In case the Landlord shall, without fault on its part in circumstances where the Tenant must indemnify the Landlord, be made party to any litigation commenced by or against the Tenant, then the Tenant shall protect and hold the landlord harmless and shall pay all reasonable costs, expenses and solicitors and counsel fees, on a solicitor and his own client basis, incurred or paid by the Landlord in connection with such litigation.

**ARTICLE IX
DEFAULT OF THE TENANT**

9.01 – Right to Re-Enter. The parties agree that the Landlord's right of re-entry shall arise on non-payment of Rent for ten (10) business days or non-performance of covenants after fifteen (15) business days notice to cure any non-performance of covenants.

**ARTICLE X
MISCELLANEOUS**

10.01 – Approval. Unless otherwise expressly stated herein to the contrary, where any provision of this Agreement requires the Tenant to obtain the consent of the Landlord such consent may not be unreasonably withheld by the Landlord

10.02 – Governing Law. This Agreement is to be governed by and construed according to the laws of the Province of Ontario.

10.03 – Partial Invalidity. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be separately valid and enforceable to the fullest extent permitted by law.

10.04 -- Time of Essence. Time shall be of the essence of this Agreement and every part hereof.

10.05 – Assigns and Successors. This Agreement shall be binding on the parties hereto and their respective successors and assigns.

10.06 – Exclusivity. The Landlord covenants that so long as the Tenant is in actual possession of the Leased Premises and is carrying on its business on the Premises in accordance with the terms of this Agreement the Landlord will not, at any time during the initial Term of the lease or any renewal, permit any other tenant or occupant of the Landlord's property to conduct, as a business the production of electricity, or any service ancillary to the said production of electricity.

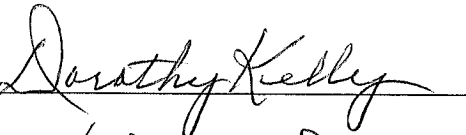
IN WITNESS WHEREOF the Landlord and the Tenant have signed and sealed this Agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED

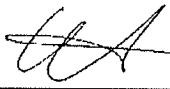
In the presence of:

Municipality of Morris-Turnberry

Sun Saver 2 Limited

Per: 

Per: 
Authorized Signature

Per: 
Authorized Signature

Dated: August 24, 2010

Dated: August 20, 2010

Schedule "A"

The Facility

The solar photo voltaic system (the "Facility") to be installed at the Leased Premises is a 10kW DEGERtracker, consisting of a single mast imbedded in a circular concrete base, 11 feet in diameter and 32 inches in height. The concrete base is set on three feet of compacted crushed stone levelled to grade. The mast supports a steel frame approximately 40 feet in length and 20 feet in width. Affixed to the frame are 40 solar panel modules including inverters and controls. The Facility has a 100 amp AC Disconnect mounted on the base. The AC cabling from the Disconnect is trenched and buried, running to the electrical pole on the Leased Premises.

The Facility is capable of producing approximately 17,000 -18,000 kwh per year depending on: i) the amount of solar radiation received by the Facility, ii) shading and iii) dust

The Tenant will erect a fence structure on the perimeter of the tracker base to ensure adequate security for the Facility. The costs of such fencing shall be borne entirely by the Tenant.

The Tenant will provide copies of the Liability Insurance in force for coverage of \$5,000,000 in the case of a claim.