Intro. Res. No. 1043-2010 Laid on Table 1/4/2010
Introduced by Presiding Officer, on request of the County Executive

RESOLUTION NO. 28 -2010, AUTHORIZING THE COUNTY EXECUTIVE TO ENTER INTO A LEASE WITH EASTERN LONG ISLAND SOLAR PROJECT TO USE COUNTY PROPERTY IN CONNECTION WITH THE DEVELOPMENT OF SOLAR ENERGY FACILITIES

WHEREAS, pursuant to a competitive procurement process Long Island Power Authority ("LIPA") has approved power purchase agreements with BP Solar International Inc. and enXco Development Corp. to provide capacity and energy, and associated renewable energy credits from solar arrays to meet LIPA's renewable energy goals; and

WHEREAS, as part of the process, the County identified a number of County locations which might be suitable for use by bidders as potential locations for the solar energy facilities; and

WHEREAS, enXco has requested the use of parking facilities at seven County locations which would be suitable for the construction and operation of the solar energy facilities, including: H. Lee Dennison Building, Hauppauge; County Center, Riverhead; Cohalan Court Complex, Central Islip; North County Complex, Smithtown; Deer Park Rail Road Station, Deer Park; Ronkonkoma Rail Road Station, Ronkonkoma; and Brentwood Rail Road Station, Brentwood; and

WHEREAS, LIPA requires utility easements on portions of the seven County locations where the solar energy facilities will be situated in order to facilitate utility interconnections with LIPA's equipment; and

WHEREAS, the County is committed to reducing carbon emissions and encouraging the use of clean, renewable energies and can demonstrate this commitment by permitting County property to be used to further renewable energy goals; now, therefore be it

1st **RESOLVED**, after coordinated SEQRA review, the Long Island Power Authority, being the State Environmental Quality Review Act (SEQRA) lead agency for this project, adopted a negative declaration for the project on December 17th, 2009, SEQRA is now complete, and no further review is necessary; and be it further

2nd **RESOLVED**, that the County Executive be and hereby is authorized to execute a Lease Agreement for seven County locations identified in "Exhibit A" annexed hereto, in substantial conformance with the Model Lease Agreement annexed hereto as "Exhibit B", and in accordance with such other terms and conditions negotiated by the County Attorney's Office and enXco, d/b/a Eastern Long Island Solar Project, LLC, necessary to facilitate the use of the County parking facilities for the construction and operation of solar energy facilities; and be it further

3rd **RESOLVED**, that the grant of non-exclusive Utility Easements be and are hereby authorized to be granted to Long Island Power Authority, and its successors and assigns, as may be necessary to facilitate the interconnection of the subject solar energy facilities located on County property to LIPA's equipment; and be it further

4th **RESOLVED**, that the Director of the Division of Real Estate of the Department of Environment and Energy is hereby authorized to execute such Utility Easements in a form in substantial compliance with the Model Utility Easement annexed hereto as "Exhibit C".

DATED: February 2, 2010

APPROVED BY:

County Executive of Suffolk County

Date: FEB 04 2010

LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

EASTERN LONG ISLAND SOLAR PROJECT, LLC, a Delaware limited liability company

Premises:

Date: , 2010

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EXHIBITS

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), made as of _____2010, by and between the COUNTY OF SUFFOLK, a municipal corporation whose address is COUNTY Center, Riverhead, New York (hereinafter the "**COUNTY**"), acting through its duly constituted Department of Public Works (hereafter the "**Department**"), located at 335 Yaphank Avenue, Yaphank, New York 11980 and Eastern Long Island Solar Project, LLC, a Delaware limited liability company, , with an address at c/o enXco, Inc., 700 La Terraza Blvd. Ste 200, Escondido, CA 92025 (hereinafter called the "**Lessee**"). County and Lessee shall hereinafter also be referred to as a "**Party**" or collectively, the "**Parties.**"

WITNESSETH, THAT:

NOW, THEREFORE, in consideration of the mutual agreements and respective promises herein contained and made by the parties hereto, the parties hereby agree, effective as the last date of execution below (the "**Effective Date**" of this Agreement) unless otherwise stated, as follows:

Section 1. Definitions

Affiliate: means any partnership, corporation or other entity which controls, is controlled by, or is under common control with Lessee or Lessee's parent.

American Arbitration Association: means the organization selected to administer arbitration between the Parties regarding Restoration Cost estimates.

Approved Site Plan: shall have the meaning set forth at *Section 7.01.*

Business Day: means any day except a Saturday, a Sunday, or any day in which commercial banks are required or authorized to close in Suffolk County, New York.

Calendar Quarter: means each three month period during the Calendar Year, i.e., January 1-March 31, April 1- June 30, July 1- September 30, and October 1-December 31.

Calendar Year: means January 1 through December 31.

Cash Flow Estimate: shall have the meaning set forth in *Section 5.02.*

Commencement Date: means the date on which the approvals of Long Island Power Authority ("LIPA") and the Suffolk County Legislature have been received. Promptly after the Commencement Date, County and Lessee shall execute a written confirmation of the Commencement Date in the form provided by County. In the event the Commencement Date does not occur on or before _____ or in the event either LIPA or the Suffolk County Legislature do not approve of the transaction contemplated herein upon terms and conditions reasonably satisfactory to Lessee, Lessee shall have the right to terminate this Agreement upon ten (10) days written notice to County and thereafter, this Agreement shall be terminated. Except for those obligations herein which are intended to survive the termination of this Agreement, neither party shall have any obligations to the other party after such termination.

Condemnor: means an entity which has authority to take private property.

Day: means a period of twenty-four (24) consecutive hours beginning at 00:00 hours EPT on any calendar Day and ending at 24:00 hours EPT on the same calendar Day.

Effective Date: means the last date of execution of this Agreement.

Environmental Attributes: mean any and all current or future credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, renewable energy credits, offsets and allowances, attributable to the Solar Energy system, or otherwise attributable to the generation, purchase, sale or sue of energy from or by the Solar Energy System, however entitled or named, resulting from the avoidance reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC or crediting "early action" emissions reduction, or Laws or regulations involving or administered by the Clean air Markets Division of the Environmental Protection Agency (or successor agency), or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any Green Tag Reporting rights to such Environmental Attributes.

Expiration Date: shall have the meaning set forth at *Section 4.01*.

Force Majeure: means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance and may include without limitation: an act of God or the elements such as heavy rains, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party; site conditions (including subsurface conditions, environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats); unavailability of materials; full or partial reduction in the electric output of the Solar Energy System caused by defective equipment or equipment failure due to equipment design defects or serial defects; full or partial reduction in the electric output of the Solar Energy System caused by systematic weather patterns that alter irradiation rates; System Emergencies; the inability of any warranty provider for the Solar Energy System to fulfill its warranty due to bankruptcy or other end of going concern event; or any restraint or restriction imposed by applicable Law or any directive from a Governmental Authority, (including the failure to grant or the repeal, rescinding, non-renewal or the like of any permit or Law, to the extent the affected Party exercised diligent and reasonable efforts to obtain or maintain such permit or the applicability of such Law).

Governmental Authorities: means the County of Suffolk, the State of New York, the Federal Government and/or any political subdivision, agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof.

Green Tag Reporting Rights: mean the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include,

without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program (including, if applicable, pursuant to the Western Renewable Energy Generation Information System Operating Rules).

Hazardous Materials: includes, without limitation, any "hazardous substance", "hazardous material", "toxic substance" "solid waste" or similar term as defined in any applicable Law pertaining in whole or part to the protection of the environment, natural resources or human health.

Improvements: means the Solar Energy Facilities, Solar Energy System and Transmission Facilities, collectively.

Laws: mean all applicable laws, statutes, regulations, ordinances, directives, and requirements of all federal, state, Suffolk County departments, bureaus, boards, agencies, offices, commissions, and other subdivisions thereof, or of any official thereof, or of any other governmental, public or quasi-public authority.

Lender: means any lender providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Solar Energy System, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing provided to a member or other direct or indirect owner of Lessee), including any equity and tax investor directly or indirectly providing financing or refinancing for the Solar Energy System or purchasing equity ownership interests of Lessee and/or its affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing obligations.

LIPA: means the Long Island Power Authority.

Monetary Default: shall have the meaning set forth at *Section 27.03(1).*

Non-Monetary Default: shall have the meaning set forth at *Section 27.03.*

Notice of Termination: shall have the meaning set forth at *Section 27.04.*

Nuisances: shall have the meaning set forth at *Section 12.*

Obligor: shall have the meaning set forth at *Section 24.01.*

Operations Date: means the date on which electricity is generated, delivered and sold (excluding start-up and testing of the Solar Energy System) by the Project or any portion thereof or used by Lessee.

Parties: means the County and Lessee, collectively.

Party: means either the County or Lessee.

PILOTs: means payments in lieu of taxes.

Premises: shall have the meaning set forth at *Section 3.01.*

Pre-Operating Annual Payments: means $ [redacted] per annum.

Pre-Operating Period: means the period from the Effective Date through the Operations Date.

Property: means the County property which is the subject of this Agreement, described in *Section 3.01* and further identified in Exhibit A.

Quarterly Operating Payments: shall have the meaning set forth at *Section 5.02.*

Renewable Energy Incentives: means (i) any federal, state, or local tax credits associated with the construction, ownership, or production of electricity from the Solar Energy System (including credits under Sections 38 and 45K of the Internal Revenue Code of 1986, as amended); (ii) any investment tax credits and any other tax credits associated with the Solar Energy System (including credits under Sections 38 and 48 of the Internal Revenue Code of 1986, as amended); (iii) any state, federal or private cash payments or grants relating in any way to the Solar Energy System or the output thereof; (iv) state, federal or private grants or other benefits related to the Solar Energy System or the output thereof, and (v) any other form of incentive that is not an Environmental Attribute that is available with respect to the Solar Energy System.

Requirements: means all rules, regulations, laws, ordinances, statutes, and requirements of all Governmental Authorities, and the requirements of any fire insurance rating organization and all insurance companies writing policies covering the Premises or any part or parts thereof and any Fire Insurance Rating Organization, Board of Fire Underwriters and/or similar bodies having jurisdiction thereof, whether the same now are in force or at any time in the future may be passed, adopted, enacted, or directed.

Resolution: means Resolution No. _____-2010 of the Suffolk County Legislature.

Solar Energy Estate: means all or any portion of Lessee's right, title or interest under this Agreement and/or in any Improvements.

Solar Energy Facilities: means individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities necessary to harness sunlight for photovoltaic energy generation, including without limitation, existing and/or future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structure, braces, wiring, plumbing, and related equipment.

Solar Energy System: shall have the meaning set forth at *Section 2.02*(b).

Term: shall have the meaning set forth at *Section 4.01.*

Termination Date: means the date specified in the Notice of Termination upon which the Agreement shall expire in the event Lessee fails to cure a Default.

Transmission Facilities: means any of the following improvements on the Property: underground and/or overhead distribution, collection and transmission lines; underground and/or overhead control, communications and radio relay systems and telecommunications equipment; energy storage facilities; interconnection and/or switching facilities, circuit breakers, transformers; cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors, and any related or associated improvements, fixtures, facilities, appliances, machinery and equipment.

Section 2. Purpose

Section 2.01 The parties hereto acknowledge that the County is a municipal corporation and is entering into and executing this Agreement by virtue of the authority of Resolution No. _____-2010 of the Suffolk

County Legislature, dated the ____ day of _____, 2010, for the use, purpose and intent expressed in the Resolution, that the Resolution is incorporated herein by reference, and further that Lessee has examined the Resolution and is fully aware of the intended purpose thereof.

Section 2.02 In accordance with applicable federal, state and local laws, rules and regulations, The County hereby leases to Lessee for the Term, the Premises for the following purposes:

a. conducting studies of solar radiation, solar energy, soils and other meteorological on geotechnical data;

b. constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, using, monitoring and operating, existing, additional or new (i) Solar Energy Facilities, (ii) electrical transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, towers, poles, crossarms, guy lines, anchors, cabling and wires, (iii) overhead and underground control, communications and radio relay systems, (iv) substations, interconnection and/or switching facilities and electric transformers and transformer pads, (v) energy storage facilities, (vi) meteorological towers and solar energy measurement equipment, (vii) control buildings, control boxes and computer monitoring hardware, (viii) utility installation, (ix) safety protection facilities, (x) maintenance yards, (xi) roads and erosion control facilities, (xii) signs and fences, and (xiii) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, wheeling, sale or other use or conveyance of electricity (all of the foregoing, including the Solar Energy Facilities, collectively a "**Solar Energy System**");

c. the development, erection, installation, construction, improvement, interconnection, reconstruction, enlargement, removal, relocation, replacement and repowering, and the use, maintenance, repair and operation of, facilities for the storage, collection, distribution, step-up, step-down, wheeling, transmission and sale of electricity and for communications in connection with the Solar Energy System, including the following that are developed, constructed and/or operated on the Property and/or on property to be acquired by leasehold or by fee purchase, by or on behalf of Lessee the Parties acknowledging and agreeing that Lessee shall have an obligation to obtain County's prior consent to the location of any Transmission Facilities;

d. drilling, digging and excavating one or more wells on the Property for the purposes of servicing, operating and maintaining the Solar Energy System. Lessee covenants and agrees to obtain County's prior written consent and any necessary permits required in connection with such wells;

e. removing, trimming, pruning, topping or otherwise controlling the growth of any tree, shrub, plant or other vegetation; dismantling, demolishing, and removing any improvement, structure, embankment, impediment, berm, wall, fence or other object, on or that intrudes (or upon maturity could intrude) into the Property that could obstruct, interfere with or impair the Solar Energy System or the use of the Property intended by Lessee hereunder;

f. vehicular and pedestrian access, ingress and egress to, from and over the Property, for purposes related to or associated with the Solar Energy System and/or the Transmission Facilities constructed, installed, maintained or repaired on the Property; or, subject to the

prior written consent of the Department: for promotional or marketing purposes: or on adjacent property owned by the County or other property acquired by leasehold, easement or fee simple purchase by or on behalf of Lessee; which, without limiting the generality of the foregoing, shall entitle Lessee to use and improve any existing and future roads and access routes (a) from time to time located on or providing access to the Property, (b) across any other adjacent property owned by the County or other property acquired by leasehold, easement, or fee simple purchase by or on behalf of Lessee and (c) across any access routes over which the County has the right to travel;

g. extracting soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analysis of or on the Property as Lessee deems necessary, useful or appropriate; and

h. undertaking any other lawful activities directly related to the purposes of this Agreement, whether accomplished by Lessee or a third party authorized by Lessee and approved by the County as otherwise required in this Agreement, that Lessee determines are necessary, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes.

Section 2.03 Without limiting the provisions of *Section 2.02*, the County acknowledges and agrees that the activities contemplated by this Agreement may be accomplished by Lessee or one or more third parties authorized by Lessee and approved by the County as otherwise required in this Agreement, subject to any such third party/subcontractor agreeing to the terms and conditions set forth in this Agreement.

Section 2.04 Notwithstanding Lessee's right to use the Premises, the County retains the right to continue to use the Premises for parking and such other public purposes not inconsistent with Lessee's use.

Section 3. Description

Section 3.01 On and after the Effective Date, and in consideration of and subject to the terms, covenants, agreements, provisions, conditions, and limitations set forth in this Agreement, the County hereby agrees to lease to Lessee a portion of property identified as Suffolk County Tax Map Number _____,located at _____ (the "**Property**"), in connection with the installation and operation of solar energy conversion equipment, which property is more specifically identified as the highlighted area on the aerial map of the subject property attached hereto as "**Exhibit A**", together with all buildings, structures, improvements, additions, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or there under during the term of this Agreement (the "**Premises**"). Upon survey of the Premises, the actual survey shall replace the aerial map described above as **Exhibit A**. It is understood by Lessee that the Property is a public facility and as such, limited access to the same is not permitted.

Section 3.02 Lessee accepts the Property in its "as is" physical condition without any representation or warranty by the County as to the condition thereof or as to the use or occupancy which may be made thereof under any existing or future law, rule, regulation, or ordinance and County shall not be liable for any latent or patent defect thereon. Lessee may use the Property for the uses set forth in this Agreement. Lessee will not do, or permit to be done, any action or thing which is contrary to any legal or insurable requirement or which constitutes a public or private nuisance or waste. Notwithstanding the foregoing, in the event pre-existing waste or contamination on the Property is revealed during construction, which condition requires remediation, Lessee may cancel this Agreement.

Section 4. Term

The term of this Agreement ("**Term**") shall begin on the Commencement Date and shall remain in effect until the later to occur of (a) the twenty-first (21st) anniversary of the Operations Date, or (b) the date which is three (3) months following the expiration of Lessee's power purchase agreement with LIPA (the latter of which shall be referred to herein as the "**Expiration Date**") subject to earlier termination as set forth hereinafter; provided, however, that if such date does not fall on a Business Day then this Agreement shall end on the next Business Day).

Section 5. Payments to County

Section 5.01 During the Pre-Operating Period, Lessee shall pay to County the Pre-Operating Annual Payment as follows: The first Pre-Operating Annual Payment shall be paid by Lessee within sixty (60) Days from the Effective Date ("**First Pre-Operating Payment Date**") and thereafter, on the anniversary of the First Pre-Operating Payment Date through the Term until the Operations Date.

Section 5.02 Commencing with the Operations Date, Lessee shall make quarterly payments to County (the "**Quarterly Operating Payments**"). A schedule setting forth the amount of the Quarterly Operating Payments shall be agreed upon, in writing, prior to the issuance of the building permit, in accordance with the Schedule of Estimated Sizing and Cash Flow Payments ("**Cash Flow Estimate**") attached hereto as **Exhibit B** and incorporated herein by this reference. The parties acknowledge and agree that the Cash Flow Estimate is based upon an estimate of the size of the Solar Energy System which once completed, may be smaller or larger than the estimated size as set forth in **Exhibit B**. Once the size of the Solar Energy System is determined, and prior to the issuance of the building permit, the parties shall execute an amendment to this Agreement to specify the Quarterly Operating Payments payable by Lessee under this Agreement. Quarterly Operating Payments shall be paid, in arrears, sixty (60) Days after the end of each Calendar Quarter during the Term unless such Day falls on a weekend or holiday in which case it shall be due on the next business Day. If the Operations Date is not the first Day of a Calendar Quarter, the Quarterly Operating Payment for the portion of the first Calendar Quarter shall be prorated on a per diem basis.

Section 5.03 Quarterly Operating Payments shall no longer be due and payable if Solar Energy System operations permanently cease at any time during the Term; provided, however, that a prorated Quarterly Operating Payment shall be due and payable for any period during which operations were conducted. This Agreement shall not be construed as imposing upon Lessee any obligation to commence or continue generating any particular quantity of electricity or derive any particular amount of receipts therefrom at any time.

Section 5.04 Lessee shall make a one-time payment to the County, in an amount mutually agreed to, in writing, which amount shall in no event exceed actual expenses incurred by the County for the installation/relocation of security cameras. **[This section to included in leases for Riverhead County Center and Cohalan Court Complex only.] [Intentionally Omitted, in all others]**

Section 5.05 Nothing contained in the foregoing shall affect the survival of the obligation of Lessee as set forth in the Sections of this Agreement covering the survival of Lessee's obligations.

Section 5.06 Lessee shall pay all Quarterly Operating Payments without set-off, abatement, deductions, defense or claims, except as specifically set forth herein, to County at County's address set forth herein or at such other place as County may designate in writing in lawful currency of the United States of America. All remittances shall be made payable to **"Suffolk County Treasurer's Office."**

Section 6. Late Charges

Section 6.01 If Lessee should fail to pay any amount required to be paid by Lessee under this Agreement within fifteen (15) Days of the due date for such payment to the County, including without limitation, any payment of fees or any payment of utility or other charges, or if any such amount is found to be due as the result of an audit, then, in such event, the County may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount, in the amount of 2.5% of any part of the invoiced amount which has become past due for each thirty (30) Day period the subject payment is late. Such penalty shall accrue on the unpaid balance until said unpaid balance is liquidated.

Section 6.02 Each late charge shall be payable immediately upon demand made at any time therefore by the County. No acceptance by the County of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the County of payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Each late charge shall be and become additional fees, recoverable by the County in the same manner and with like remedies as if it were originally a part of the fees payable hereunder. Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (i) any rights of the County under this Agreement, including without limitation the County's rights set forth in **Section 28** of this Agreement or (ii) any obligations of Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum, such late charge payable under this Agreement shall be payable instead at such legal maximum.

Section 7. Lessee's and County's Duties and Obligations

Section 7.01 Lessee hereby agrees to design, construct and install the Improvements in accordance with this Agreement and the Approved Site Plan. For purposes of this Agreement, the "**Approved Site Plan**" is the site plan depicting the initial location and specifications of the Improvements to be constructed and installed by Lessee which has been approved by the County. The Approved Site Plan shall be attached hereto as **Exhibit C** and incorporated herein by this reference. An "Amended Approved Site Plan" may be substituted as **Exhibit C** upon mutual agreement of the parties. Notwithstanding the foregoing, the parties agree that solar energy technologies are improving at a rapid rate and that it is probable that Lessee may (although Lessee shall not be required to) replace from time to time existing Solar Energy Facilities on the Premises with newer model or design Solar Energy Facilities which have increased energy capture and efficiency, subject to prior approval to the Department, which approval shall not be unreasonably withheld, conditioned or delayed.

Section 7.02 Lessee agrees to be solely responsible for any plans and specifications used by it and for any loss or damages resulting from the use thereof. Notwithstanding any rights the County may have reserved to itself hereunder, the County shall have no liabilities or obligations of any kind to any contractors engaged by Lessee or for any other matter in connection therewith and Lessee hereby releases and discharges the County, its officers, representatives, and employees of and from any and all liability, claims for damages or losses of any kind, whether legal or equitable, including reasonable attorney's fees and other professional fees, or from any action or cause of action arising or alleged to arise out of or in connection with the performance of any of the construction associated with the Improvements pursuant to the contracts between Lessee and its contractors.

Section 7.03 Lessee agrees to provide a construction schedule and an alternative parking plan to the Department no less than thirty (30) days prior to the commencement of construction, which schedule and plan shall minimize disruption to persons using the parking facilities during construction.

Section 7.04 During the Term of this Agreement, Lessee, its authorized representatives, contractors and/or subcontractors shall have the right, at their own cost, expense, liability, and risk, of access to the Property for the purposes set forth in this Agreement. Lessee shall use due care at all times Lessee, its authorized representatives, contractors and/or subcontractors are on County property and shall perform all work in connection with the construction, installation, maintenance or repair of the Improvements in a safe manner.

Section 7.05 Lessee shall use its commercially reasonable efforts to avoid interfering with the County's use of the Property. Lessee shall further provide proper striping for parking spaces upon completion of the Improvements and shall clean up and remove all debris and materials generated pursuant to its construction and installation on the Property at Lessee's sole cost, expense, liability, and risk.

Section 7.06 Lessee shall provide, at Lessee's sole cost and expense, all security measures reasonably necessary, in Lessee's opinion, subject to the Department's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed, for the Premises, including, warning signs, fencing, and other measures appropriate and reasonable to protect against damage or destruction of Lessee's Improvements or injury or damage to persons or property on the Premises.

Section 7.07 Lessee shall pay or cause to be paid all claims lawfully made against it by its contractors, subcontractors, tradespersons and workers, and all claims lawfully made against it by other third persons arising out of or in connection with Lessee's use of the Premises under this Agreement, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them; provided, however, that nothing herein contained shall be construed to limit the right of Lessee to contest any claim of a contractor, subcontractor, tradespersons, workman, or other person and no such claim shall be considered to be an obligation of Lessee within the meaning of this Section unless and until the same shall have been finally adjudicated. Lessee shall use its best efforts to resolve any such claims and shall keep the County fully informed of its actions with respect thereto.

(a) Nothing contained herein shall grant or be deemed to grant to any contractor, architect, supplier, subcontractor, or any other person engaged by Lessee or any of its contractors in the performance of any part of the duties or obligations under this Agreement, any right of action or claim against the County, its officers, agents and employees with respect to any work any of them may do in connection with the project.

(b) Nothing contained herein shall create or be deemed to create any relationship between the County and any such contractor, architect, supplier, subcontractor, or any other person engaged by Lessee or any of its contractors in the performance of any part of the duties or obligations under this Agreement and the County shall not be responsible to any of the foregoing for any payments due or alleged to be due thereto for any work performed or materials purchased in connection with the Improvements.

Section 7.08 This Agreement includes the right of ingress to and egress from the Solar Energy System over, under, and along the Property by means of any existing roads and lanes thereon, and by such other, mutually agreed upon route or routes as Lessee may construct on the Property from time to time, subject to the Department's prior written approval, for the benefit of and for purposes incidental to Lessee's operation and maintenance in connection with the Improvements that are developed, constructed and/or operated on the Property.

Section 7.09 The County shall not grant any rights in the Property purporting to permit others to conduct operations on the Property in derogation of Lessee's right to conduct operations on the Property in connection with the Solar Energy System.

Section 7.10 Lessee shall pay any personal property taxes, special assessments or PILOTs that may be levied or assessed on the Improvements (or any taxes that are directly attributable to the Improvements)Lessee shall also pay for any increase in the ad valorem property taxes levied against the Property that are assessed for the period from and after the Effective Date until the end of the Term hereof to the extent such increase is caused solely by the Solar Energy System; provided, however, such obligation shall not include any recaptured taxes attributable to any period prior to the Effective Date or any interest or penalties thereon or to any increases in taxes due to reassessment upon a transfer of the fee interest in the Property by the County, and Lessee shall have the right, at its own expense, to appeal or contest any such taxes or increases thereto and to compromise and settle the same and County shall execute such petitions and agreements and otherwise cooperate with Lessee to the extent reasonably necessary for Lessee to do so Lessee shall be responsible for all taxes, special assessments, or PILOTS that may be levied or assessed against the Premises.

Section 7.11 Lessee shall not do or permit to be done anything which may interfere with the effectiveness or accessibility of the utility, mechanical, electrical, drainage and sewer systems, and other systems installed or located on the Property.

Section 7.12 Lessee shall provide submittal drawings approved by its engineering consultant of installation components and others and as reasonably requested by the Department for a review prior to installation of any Improvements.

Section 7.13 To the extent the same exist, the County will provide Lessee with drawings, standard roadway and curbing details, and other information regarding existing site layouts and underground utilities. Lessee bears full responsibility for ensuring all underground utilities are identified prior to excavation and will be wholly liable for any damage to any utilities.

Section 7.14 County understands that the point of connection to LIPA's utility system shall be located on County property. Lessee agrees that it shall not install any equipment and appurtenances to deliver energy to LIPA unless prior written approval for the same is granted by the Department.

Section 7.15 Lessee shall maintain and promptly repair the Premises to keep same in good repair and condition, regardless of fault, except in the event of negligence or willful misconduct by the County, and in accordance with general industry practice in the operation of such Solar Energy System, at Lessee's sole cost and expense. Lessee acknowledges that the Property is used for public parking purposes and agrees to maintain the Improvements in a manner which minimizes nuisances and inconvenience to persons using the parking facilities including, but not limited to, nesting birds and water run-off.

Section 7.16 Lessee shall have a physical inspection of all Improvements conducted by a New York State licensed professional engineer at least once every three calendar years during the Term to ensure that the Improvements continue to maintain structural stability. Lessee will provide an annual written report to the Department, setting forth the findings of such survey and delineating any remedial actions to be taken.

Section 7.17 Lessee warrants and represents that any exterior lighting installed as part of Lessee's Installation shall be in compliance with the Dark Skies legislation enacted by the County of Suffolk by Resolution # 838-2004. In the event existing lighting located on the Property needs to be altered as part

of Lessee's Installation, Lessee agrees to provide, at its sole cost and expense, alternate lighting satisfactory to the Department.

Section 7.18 Lessee understands that the Property may be located in high wind region of New York State and appropriate care will be taken to ensure that all designs meet applicable wind, seismic, and snow loading criteria.

Section 7.19 In the event Lessee removes any trees or shrubs located on the Property, Lessee shall provide a like number of such trees and/or shrubs on the Property, in accordance with the directions of the Department.

Section 7.20 Lessee shall not tie into, or in any manner use or otherwise access utility services to the Property in a manner which increases costs to the County.

Section 8 Prevailing Wage

Lessee acknowledges and agrees to comply with the prevailing wage requirements in connection with the construction of the Improvements. No person performing, aiding in, or assisting in Lessee's construction of the Improvements shall be paid less than the said prevailing rates as defined and utilized under Section 220 of the Labor Law. The wages to be paid shall not be less than the prevailing rate of wages and supplements as set forth by law.

a. Lessee, its contractors, and subcontractors, shall file transcripts of original payrolls for the construction of the Improvements under this Agreement, in connection with the construction and preparation of the entire Premises, with the Department, within ten (10) Days after its first payroll, and every thirty Days thereafter, said payroll transcripts to be subscribed and affirmed as true under penalty of perjury. Lessee, its contractors and subcontractors, shall keep their books open for inspection by representatives of the Suffolk County Department of Audit and Control and/or its representatives, including the Office of the District Attorney, on a monthly basis during the construction of the Improvements, to ensure that Lessee, its contractors and subcontractors are in compliance with these terms and conditions, provided that twenty-four (24) hour-notice is given to Lessee, its contractors and/or subcontractors prior to the inspection.

b. Lessee agrees that it shall include clauses in all of its agreements with its contractors and subcontractors for the construction of the Improvements stating that: (i) said contractors and subcontractors shall pay prevailing wages, as agreed to in this Agreement between County of Suffolk and the Lessee; (ii) said contractors and subcontractors shall file transcripts of original payrolls for all work performed in connection with the construction and preparation of the Improvements under this Agreement with the Department within ten (10) Days after its first payroll, and every thirty Days thereafter, said transcripts to be subscribed and affirmed as true under penalty of perjury and (iii) Lessee, its contractors, and subcontractors shall keep their books open for inspection by representatives of the Suffolk County Department of Audit and Control and/or its representatives, including the Office of the District Attorney, on a monthly basis during the construction of the Improvements to ensure that Lessee, its contractors and subcontractors are in compliance with these terms and conditions, provided

that twenty-four (24) hour-notice is given to Lessee, its contractors and/or subcontractors prior to the inspection.

Section 9. Other Construction by Lessee

Section 9.01 Except as otherwise expressly provided herein, Lessee shall not erect any structures, make any improvements, or do any other work on the Property, or install any fixtures other than as set forth in the Site Plan and in *Section 7.01* without the prior written approval of the Department. In the event any construction, improvement, alteration, modification, addition, repair, or replacement is made without such approval, then upon reasonable notice to do so, Lessee shall remove the same or, at the option of the County, cause the same to be changed to the satisfaction of the County. In case of any failure on the part of Lessee to comply with such notice, the County may effect the removal or change and Lessee shall pay the cost thereof to the County.

Section 10. Requirements of Governmental Agencies

Section 10.01 Lessee will proceed with due diligence to construct and install the Solar Energy System and shall comply in all material respects with Laws, in force as of the Commencement Date, and all requirements, obligations and conditions of all instruments of record which may be applicable to the Premises. All work of Lessee and its subcontractors will be coordinated with the Department. Lessee reserves the right, in its sole discretion and at its sole expense, to contest the validity or applicability of any Laws.

Section 10.02 Lessee understands that the Department is the authority having jurisdiction with respect to Building Permits relating to construction on County property. All Improvements constructed by Lessee pursuant to this Agreement shall be coordinated with the Department to ensure and maintain the safety of the public. Lessee shall be in compliance with all pertinent codes and shall obtain all necessary permits for the construction, use, and/or operation of the Improvements. All documents (drawings, specifications, etc.) regarding the Improvements shall be prepared by and bear the seal and signature of a State Licensed Professional Engineer.

Section 10.03 Lessee agrees to comply with all reasonable requests for special inspections by the Department during construction including, but not limited to, concrete testing, and electrical inspections.

Section 11. Liens

Lessee shall keep the County's interest in the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies and equipment furnished in connection with Lessee's use of the Premises under this Agreement. In the event it is permissible for any mechanics' or other liens to be filed against any portion of the Property by reason of Lessee's acts or omissions or because of a claim against Lessee, Lessee shall cause the same to be cancelled or discharged of record by bond or otherwise within ninety (90) Days after notice from the County of the filing thereof and Lessee shall indemnify and save the County harmless from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting there from; provided, however, that nothing herein contained shall be construed to limit the right of Lessee to contest any claim of a contractor, subcontractor, tradespersons, workman, or other person and no such claim shall be considered to be an obligation of Lessee within the meaning of this Section unless and until the same shall have been finally adjudicated. If Lessee shall fail to cancel or discharge said lien or liens within said 90-Day period, County may cancel or discharge the same and upon County's demand, Lessee shall reimburse the County for the costs or expenses thereof, within sixty (60) days after receipt of an invoice therefore. Nothing contained in this Agreement shall be deemed or construed in any way as constituting the consent or

request of the County, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Property or any part thereof, nor as giving Lessee any right, power or authority to contract for or permit the rendering of such services of the furnishing of any materials that would give rise to the filing of any lien against the Property or any part thereof.

Section 12. Waiver of Nuisance

The County has been informed by Lessee and understands that the presence and operation of the Improvements on the Property may potentially result in some nuisance to the County, such as higher noise levels than currently occur at the Property and the surrounding area and visual impact ("**Nuisances**"). It is the intent of the parties hereto that these Nuisances shall be held to a commercially reasonable minimum. To this end Lessee shall take all possible care, caution and precaution and shall use its commercially reasonable efforts to minimize Nuisances.

Section 13. Temporary Storage

Section 13.01 Temporary Storage Space During Installation. The County will use commercially reasonable efforts to provide sufficient space on the Property, if needed, for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the installation of the Solar Energy System. The County will also provide Lessee a reasonable area on the Property, if needed, for construction type lay-down and staging. The County and Lessee will coordinate and cooperate in determining the amount of space required for such purposes.

Section 13.02 Temporary Storage Space During Maintenance. The County will use commercially reasonable efforts to provide sufficient space adjacent to the Premises, if needed, for the temporary storage and staging of tools, materials and equipment during any maintenance of the Solar Energy System. The County and Lessee will coordinate and cooperate in determining the amount of space required for such purposes.

Section 14. Insurance

Section 14.01 Lessee shall procure and continuously maintain, without interruption, during the Term, insurance, naming the County as an additional insured, in amounts not less than as follows:

(i) Commercial General Liability, in an amount not less than Two Million Dollars ($2,000,000.00) per occurrence for bodily injury and Two Million Dollars ($2,000,000.00) per occurrence for property damage (such limits may be maintained by using a combination of primary and excess liability policy limits);

(ii) Automobile Liability Insurance (if any vehicles are used by Lessee in the performance of the Ground Lease) in an amount not less than Five Hundred Thousand Dollars ($500,000.00) per person, per accident, for bodily injury and not less than One Hundred Thousand ($100,000.00) for property damage per occurrence; and

(iii) Workers' Compensation and Employer's Liability insurance in compliance with all applicable New York State laws and regulations and Disability Benefits insurance, if required by law. Lessee shall furnish to the County, prior to its execution of this Agreement, the documentation required by the State of New York Workers' Compensation

Board of coverage or exemption from coverage pursuant to §§ 57 and 220 of the Workers' Compensation Law. In accordance with General Municipal Law §108, this Agreement shall be void and of no effect unless Lessee shall provide and maintain coverage during the Term for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law;

(iv) Builders Risk Insurance "All Risk" coverage in an amount equal to the total value of the Improvements which shall be obtained prior to commencement of construction of the Improvements and shall remain in effect until a permanent Certificate of Occupancy is obtained therefor. Such coverage shall include vandalism and malicious mischief, in broad form covering improvements in place and all material and equipment at the job site furnished under contract, but excluding contractor's, subcontractor's, and construction manager's equipment and property owned by contractor's or subcontractor's employees.

(v) Mandatory Insurance – All insurance required by any Requirements.

With respect to insurance requirements during construction of the Improvements, Lessee may provide such insurance by requiring each contractor engaged by it for the construction to procure and maintain such insurance including such contractual liability endorsement, said insurance not to contain any care, custody or control exclusions, any exclusions for explosions, collapses, or damage to, bodily injury to, or sickness, disease, or death of any employee of Lessee or of any of its contractors which would conflict with or in any way impair coverage under the contractual liability endorsement. There shall be no self insurance retention aspects to such insurance unless agreed to in writing by the County.

Section 14.02 All policies of insurance described in this **Section 14** shall:

(i) Be written as primary policies not contributing with and not in excess of coverage that County may carry;

(ii) The Contractor shall furnish to the County Declaration Pages for each such policy of insurance and upon request, a true and certified original copy of each such policy, evidencing compliance with the aforesaid insurance requirements. In the case of commercial general liability insurance, the County of Suffolk shall be named as an additional insured and the Contractor shall furnish a Declaration Page and endorsement page evidencing the County's status as an additional insured on said policy;

(iii) Expressly provide that County shall have no liability for premiums;

(iv) Shall be issued by insurance companies with an A.M. Best rating of A- or better and are licensed to do business in the State of New York; and

(v) All such Declaration Pages, certificates and other evidence of insurance shall provide for the County of Suffolk to be notified in writing thirty (30) days prior to any cancellation, nonrenewal or material change in said policies. Such Declaration Pages, certificates, policies and other evidence of insurance and notices shall be mailed to the Department at its address as set forth in this Agreement or at such other address of which the County shall have given the Contractor notice in writing.

Section 14.03 In addition to the obligations set forth in this **Section 14**, and all other insurance required

under this Agreement, the policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded Lessee there under with respect to any claim or action against Lessee by a third person shall pertain and apply with like effect with respect to any claim or action against Lessee by the County, but such endorsement shall not limit, vary, change, or affect the protections afforded the County there under as an additional insured. In addition, all the aforesaid policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded the County there under with respect to any claim or action against the County by Lessee shall be the same as the protections afforded Lessee there under with respect to any claim or action against Lessee by a third person as if the County were the named insured thereunder.

Section 14.04 In the event Lessee shall fail to provide the Declaration Pages or certificates of insurance or to maintain any insurance required by this Agreement, the County may, but shall not be required to, obtain such policies and add the cost thereof to payments due County under this Agreement or any other agreement between the County and Lessee.

Section 14.05 Notwithstanding the foregoing, it is specifically understood and agreed that the County shall have the right to submit, from time to time, in writing to Lessee, a request that one or more coverage line limits be increased; provided County provides Lessee with a reasonable justification for said request. Lessee shall take all reasonable requests under consideration and comply by submitting a revised Certificate of Insurance to the County evidencing the limit increases.

Section 14.06 Each policy of insurance required by this **Section 14** shall contain a provision that the insurer shall not, without obtaining express advance permission from the Suffolk County Attorney, raise any defense involving in any way the jurisdiction of the court over the person of the County, the immunity of the County, its officers, agents or employees, the governmental nature of the County or the provisions of any statutes respecting suits against the County.

Section 14.07 If at any time any of the insurance policies shall become reasonably unsatisfactory to the County as to form or substance or if any of the carriers issuing such policies shall be or become unsatisfactory to the County, Lessee shall promptly obtain a new and satisfactory policy in replacement, the County agreeing not to act unreasonably hereunder. Failure to maintain insurance in the amounts reasonably required and commercially available from insurers licensed to do business in the State of New York, and in accordance with industry standards shall constitute grounds to immediately terminate this Agreement.

Section 15. Indemnity

Section 15.0 1 Lessee shall protect, indemnify and hold harmless the County, its Commissioners, officers, officials, employees, agents, and representatives, from and against all lisbilities, fines, penalties, actions, damages, claims and demands, judgments, losses, costs, expenses, suits, or actons and reasonable attorney's fees, including, but not limited to, claims and demands for death or personal injuries, or for property damages, arising out of or in connection with Lessee's use of the Property under this Agreement, except for claims, liabilities and damages arising out of County's sole negligence or willful misconduct or, arising out of the acts or omissions or negligence of Lessee, its officers, officials, employees, subcontractors, lessees, licensees, invitees or agents, if any, in connection with the services described or referred to in this Agreement.

Section 15.02 For any claim for which Lessee shall be required to indemnify the County, Lessee shall, at its own expense, defend any suit with counsel of Lessee's selection (approved by the County) based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining express advance permission from the Suffolk County

Attorney, make any material decisions related to the defense of the claim on the County's behalf. Lessee shall reimburse the County for any costs or expenses, including legal expenses, incurred by the County.

Section 15.04 Lessee hereby represents and warrants the Lessee will not infringe upon any copyrighted work or material in accordance with the Federal Copyright Act during the term of this Agreement. Furthermore, Lessee agrees that it shall protect, indemnify, and hold harmless the County and its officers, officials, employees, contractors, agents, and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions and reasonable attorney's fees arising out of the acts or omissions or the negligence of Lessee in connection with the operations described or referred to in this Agreement. Lessee shall defend the County and its officers, officials, employees, contractors, agents and other persons in any suit, including appeals, or, at the County's option, pay reasonable attorney's fees for defense of any such suit arising out of the acts or omissions or negligence of Lessee, its officers, officials, employees, subcontractors, lessees, licensees, invitees or agents, if any, in connection with the services described or referred to in this Agreement.

Section 16. Removal and Restoration

Section 16.01 Simultaneous with any Notice of Termination or, at least three (3) months prior to the expiration of the Term hereof, Lessee shall present the County a decommissioning plan ("Decommissioning Plan") for the Improvements, which Decommissioning Plan shall include the removal of all physical material related to the Improvements (excluding any subsurface items, including buried electrical and communications lines except any underground structures, materials, or other appurtenances that are easily and quickly removed without significant excavations, or which create an impediment to future renovation and/or development of the Premises) and restoration of the Premises to substantially the same condition it was in as of the Effective Date, including lighting (reasonable wear and tear, condemnation, casualty damage and acts of God excepted (all hereinafter referred to as "**Restoration**"). Within twenty (20) business Days of receipt of such Decommissioning Plan, the County shall have the right to request that Lessee abandon all or any portion of the Improvements on the Premises (the "**Abandonment Request**"). In the event the County does not submit an Abandonment Request, Lessee shall proceed with the Decommissioning Plan. If the County does submit an Abandonment Request, Lessee shall then have ten (10) business Days to respond to such Abandonment Request with its acceptance or rejection of such Abandonment Request. Failure by the Lessee to respond to any Abandonment Request shall be deemed to be an approval of such Abandonment Request. If Restoration is required herein, Lessee shall use commercially reasonable efforts to complete the Restoration within sixty (60) Days following the expiration or earlier termination of this Agreement. Further, Lessee shall execute and record a quitclaim deed of Lessee's right, title and interest in and to the Premises and, if applicable, title to any portion of the Improvements abandoned by Lessee following the expiration or earlier termination of the Agreement shall be deemed to have vested in the County. In the event Lessee shall abandoned all or any part of the Improvements, Lessee shall remain liable for any costs incurred by the County in removing and disposing of such Improvements in accordance with the provisions of this *Section 16.01*.

Section 16.02 In the event the County requires a decommissioning surety, County shall give Lessee written notice no earlier than nine (9) year(s) from the Effective Date to require Lessee to provide County with a bond or one or more letters of credit with County designated as the beneficiary, to be deposited with the Department of Public Works, in the amount of the estimated costs of Restoration ("Restoration Costs"). Within no less than one hundred eighty (180) days after the receipt of the written notice, County and Lessee shall determine the amount of the Restoration Costs as follows:

(a) Lessee shall obtain an estimate of the Restoration Costs from a qualified contractor licensed in the state in which the Property is located and notify the

County of the name and address of the contractor which it has selected. Within thirty (30) days thereafter, Lessee shall provide the estimate to County. In the event County is not in agreement with Lessee's estimate, County may, at its own cost and expense, obtain its own estimate within thirty (30) days of Lessee presenting its estimate. If the bids are within a 10% difference of the cost of the other, Lessee shall be entitled to use the bid from its contractor as the basis for the Restoration Costs. In the event the bids are more than 10% different, a third contractor shall be selected by the existing contractors. If they cannot agree upon such third contractor within a sixty (60) day period, the third contractor shall be selected by an Arbitrator of the American Arbitration Association for the County in which the Property is located upon application of either party. Within thirty (30) days of the appointment of the third contractor, the three contractors shall meet and exchange their estimates and the Restoration Costs shall be the average of the estimates of the three contractors.

(b) The letter of credit/bond shall remain in force through the expiration or earlier termination of this Lease and until the completion of such work. Upon written request, no more than once in any calendar year, County may request that Lessee provide County with information and documentation to confirm the existence and maintenance of such security in favor of County.

Section 16.03 The letter of credit/bond for the performance of the decommissioning of the Improvements shall be in the form annexed hereto as **Exhibit D**, with a corporate surety licensed to do business in the State of New York.

Section 17. Ownership of Attributes

The County acknowledges that Lessee shall have all right, title and interest in and to all "Environmental Attributes" and "Renewable Energy Incentives", and other items of whatever nature which are available as a result of solar energy being produced from the Solar Energy System. If any Environmental Attributes, Renewable Energy Incentives or other items are initially credited or paid to the County, the County will cause such environmental Attributes, Renewable Energy Incentives and other items to be assigned or transferred to Lessee without delay. The County will cooperate with Lessee in Lessee's efforts to meet the requirements for any certification, registration, or reporting program relating to Environmental Attributes or Renewable Energy Incentives.

Section 18. Hazardous Substances and Waste

Section 18.01 The County represents and warrants to Lessee that, to the best of its knowledge (i) no Hazardous Materials exist on, or have been released or are in imminent threat of release at, on, in to or from the Property nor (ii) shall the County use, store, dispose of or release on or to the Property or (iii) cause or permit to exist or be used, stored, disposed of or released on or to the Property any Hazardous Material except in such quantities as may be required in its agricultural use of the Property and only if such use is not harmful to Lessee or its employees and is in full compliance with all applicable Laws.

Section 18.02 Lessee hereby covenants that Lessee shall not (i) use, store, dispose or release on or to the Property or (ii) cause or permit to exist or be used, stored, disposed of or released on or to the Property any Hazardous Material except in such quantities as may be required in its development of the Solar Energy System on the Property and only if such use is in full compliance with all applicable Laws. Should any claim or action be brought against Lessee in connection with its operations with respect to any of the foregoing, Lessee shall immediately notify the County and shall defend and indemnify the County

with respect to such claim or action shall, in addition to complying with all other requirements of law or this Agreement, pay to County the reasonable fees incurred by County for the services of attorneys, consultants, contractors, experts, laboratories, and all other reasonable costs incurred in connection with the investigation, required cleanup or remediation, including the preparation of any feasibility studies or reports and the performance of any required cleanup, remediation, removal, abatement, containment, closure, restoration, or monitoring work.

Section 18.03 Lessee shall indemnify, defend, and hold harmless County, its officers, agents, and employees from all fines, suits, procedures, claims and action of every kind, and all costs associated therewith (including attorney's and consultants' fees) arising out of or in any way connected with, directly or indirectly, any deposit, spill, discharge, leakage or other release of Hazardous Substances, flammable explosives, or contamination caused by Lessee, or as proximately caused by Lessee's use of the Property pursuant to this Agreement. Lessee's obligations and liabilities under this Section shall survive the expiration or earlier termination of this Agreement.

Section 19. Signs

Except with the prior written approval of the County, Lessee shall not erect, maintain, or display any advertising, signs, or similar device on the Property, which approval shall not be unreasonably withheld.

Section 20. Quiet Enjoyment

The County agrees that Lessee shall quietly and peaceably hold, possess and enjoy the Property pursuant to the terms of this Agreement, and for the Term of this Agreement without any hindrance or molestation caused by any party claiming by, through or under the County. The County shall defend title to the Property, and the use and occupancy of the same, against the claims of all others, except those claiming by or through Lessee. The County shall not enter into or modify any documents, including any declarations, easements, restrictions or other similar instruments, which may materially affect the the rights and/or obligations of Lessee hereunder, without first obtaining the prior written consent of Lessee, which consent shall not be unreasonably withheld.

Section 21. Representations, Warranties and Covenants

Section 21.01 The County shall not take any actions, or permit others to take any actions, at the Property that unreasonably cause shading of the Solar Energy System or otherwise interfere with the direct solar radiation of the Solar Energy System without obtaining the prior written consent of the Lessee.

Section 21.02 If the County becomes aware of any circumstances relating to the Solar Energy System or the Property which creates an imminent risk of damage or injury to any person or any person's property, the County will immediately notify Lessee of such threat. If the threat relates to the Property and not to the Solar Energy System, the County shall promptly take such action as is necessary or appropriate to prevent such damage or injury.

Section 21.03 The County will promptly notify Lessee of any physical conditions or other circumstances the County becomes aware of that indicate there has been or might be damage to or loss of the use of the Solar Energy System or that could reasonably be expected to adversely affect the Solar Energy System.

Section 21.04 Each person executing this Agreement on behalf of the County represents and warrants that such person is duly and validly authorized to do so and that the County has the full right and

authority to enter into this Agreement, perform all of its obligations hereunder and grant the interests herein granted.

Section 21.05 Each person executing this Agreement on behalf of Lessee represents and warrants that such person is duly and validly authorized to do so and that Lessee has the full right and authority to enter into this Agreement and perform all of its obligations hereunder. *Section 21.06* County represents and warrants to Lessee that it owns the Property in fee simple, subject to no liens or encumbrances except as disclosed in writing to Lessee prior to the execution of this Lease and attached hereto as **Exhibit E** and incorporated herein by this reference.

Section 21.07 The County shall have no ownership or other interest in any Improvements installed on the Property by or on behalf of Lessee, except as provided in **Sections 16** and **27**,and the County hereby waives any statutory or common law lien that it might otherwise have in or to the Improvements or any portion thereof. Lessee shall at all times retain title to the Improvements, with the right, at any time and in its sole discretion, to remove, replace or repair one or more Improvements as otherwise set forth herein, except as provided in **Sections 16** and **27**.

Section 21.08 Lessee warrants that the execution and delivery of this Agreement was duly authorized by all necessary action of the Lessee, none of which action has been rescinded or otherwise modified. Lessee has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. No consents, approvals or permits are required for the performance of the terms and provisions herein, or, if any such consents, approvals or permits are required, they have been or will be obtained in a timely fashion. This Agreement is a legal, valid, and binding obligation of the Lessee, enforceable against Lessee in accordance with its terms.

Section 22. Confidentiality

Fully executed contracts, including leases, are subject to the New York Freedom of Information Law (FOIL). Therefore, if Lessee believes that any information it may provide or is contained herein constitutes a trade secret or is otherwise information which if disclosed would cause substantial injury to its competitive position in the industry (collectively, "Lessee Confidential Information") and Lessee wishes such information to be withheld if requested pursuant to FOIL, Lessee shall submit a separate letter to the County, specifically identifying the page number(s), section(s), lines(s) or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret or is other information which if disclosed would cause substantial injury to the competitive position of Lessee, and formally requesting that such information be kept confidential. Failure by Lessee to submit such a letter may constitute a waiver of any rights Lessee may have under the FOIL relating to protection of trade secrets. The proprietary nature of the information designated confidential by Lessee may be subject to disclosure if it is requested under FOIL and the County deems it disclosable or if ordered by a court of competent jurisdiction. A request that an entire Agreement be kept confidential will not be considered.

Section 23. Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the County and Lessee, and their respective heirs, successors and assigns. Lessee covenants that it shall not assign this Agreement nor sublet the Premises or any part thereof, by operation of law or otherwise; provide, however, that Lessee may assign the Agreement or portion thereof ewith the prior written consent of the County in each instance, not to be unreasonably withheld, conditioned or delayed. Any attempt by Lessee without the County's prior written consent to assign, encumber or mortgage this Agreement or a portion thereof shall be null and void, provided however, that Lessee may without obtaining the County's prior consent, (but

with complying with the other provisions of this Section), assign this Agreement or sublet all or any portion of the Premises to (a) an "Affiliate", (b) a Lender in connection with any financing by Lessee of the Solar Energy System in accordance with **Section 24** below, or (c) to a person or entity to which it sells or assigns all or substantially all of its assets or equitable ownership interest or with which it may be consolidated or merged (a "Successor Entity"), provided such Successor Entity shall also (i) be an entity having experience in the operation and maintenance of solar photovoltaic systems (ii) be financially capable of performing Lessee's obligations under this Agreement, and (iii) agree to assume all of Lessee's obligations under this Agreement in writing. Each assignment, assumption or sublease, as applicable, shall be in writing, and Lessee shall deliver to the County a fully-executed original of such assignment and assumption or sublease, as applicable, within ten (10) Days following the full execution thereof.

Section 24. Leasehold Financing

Section 24.01 Right to Encumber. Lessee or any authorized successor or assignee under **Section 23** (each, an "**Obligor**") may at any time assign, encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) all or any portion the Solar Energy Estate to any Lender provided the County is given written notice of such assignment, encumbrance, hypothecation, mortgage or pledge within a reasonable time of Solar Energy Estate being encumbered.

Section 24.02 Covenants for Lenders' Benefit. Should an Obligor mortgage any of its interest as provided in *Section 24.01* above, the County expressly agrees for the benefit of Lessee and any Lenders as follows:

(a) The County will not amend or modify, or take any action causing, consenting to or accepting the amendment or modification of this Agreement, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender.

(b) Lender shall have the right to do any act or thing required to be performed by Obligor under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any of Obligor's rights under this Agreement as if done by Obligor itself.

(c) The right of a Lender to receive notices and to act on behalf of Obligor as set forth in this *Section 24.02* shall be available only to those Lenders which shall have notified the County (or which Lessee has notified the County of) in writing of their name and address ("**Registered Lenders**"). The County shall provide notice of the occurrence of any Event of Default hereof to all Registered Lenders, and no Event of Default shall be effective unless a like notice is given to all such Registered Lenders. If the County shall become entitled to terminate this Agreement due to an uncured Event of Default by Obligor, the County will not terminate this Agreement unless it has first given written notice of such uncured Event of Default and of its intent to terminate this Agreement to each Registered Lender and has given each Registered Lender at least thirty (30) Days after the expiration of the cure period which this Agreement provides to Obligor for curing such Event of Default, to cure the Event of Default to prevent such termination of this Agreement. Furthermore, if within such thirty (30) Day period a Registered Lender notifies the County that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Agreement in order to cure a Non-Monetary Event of Default, the County shall not terminate this Agreement and shall permit such Registered Lender a sufficient period of time as may be necessary for such Registered Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Agreement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Registered Lender shall elect to exercise its rights hereunder, the sole recourse of the County in seeking enforcement of its rights under

this Agreement or any new lease entered into pursuant to *Section 24.02*(d) shall be to such Registered Lender's interest in this Agreement and the Improvements. Upon the sale or other transfer of any interest in the rights granted hereunder by any Registered Lender, such Registered Lender shall have no further duties or obligations hereunder.

(d) In case of the termination of this Agreement as a result of any Event of Default , the County shall give prompt notice to the Registered Lenders. The County shall, upon written request of the first priority Registered Lender, made within forty (40) Days after notice to such Registered Lender, enter into a new lease agreement with such Registered Lender, or its designee, within twenty (20) Days after the receipt of such request. Such new lease agreement shall be effective as of the date of the termination of this Agreement by reason of Event of Default by Obligor, upon the same terms, covenants, conditions and agreements as contained in this Agreement. Upon the execution of any such new lease agreement, the Registered Lender shall (i) pay the County any amounts which are due the County from Obligor, (ii) pay the County any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of the termination of this Agreement to the date of the new lease agreement, and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements set forth in this Agreement to be performed by Obligor to the extent that Obligor failed to perform the same prior to the execution and delivery of the new lease agreement.

(e) As long as there is a Solar Energy Estate, neither the bankruptcy nor the insolvency of Lessee shall operate to terminate, nor permit the County to terminate, this Agreement as long as all rent and other charges payable by Lessee continue to be paid in accordance with the terms of this Agreement.

(f) The time available to a Registered Lender to initiate foreclosure proceedings as aforesaid shall be extended by the number of Days of delay occasioned by judicial restriction against such initiation or occasioned by other circumstances beyond such Registered Lender's reasonable control.

(g) Upon the request of a Registered Lender, the County and Lessee shall amend this Agreement to include any reasonable provision requested by such Registered Lender to implement the protective provisions contained in this Agreement for the benefit of such Registered Lender or to allow such Registered Lender reasonable means to protect or preserve the Solar Energy Estate granted hereby or the lien of its leasehold mortgage on the occurrence of an Event of Default under this Agreement; provided, however, that the County shall not be required to amend this Agreement in any way which would affect the Term or rental hereunder or otherwise in any material respect adversely affect any rights of the County under this Agreement.

Section 25. Condemnation

Should title or possession of all or any portion of the Premises be taken in condemnation proceedings by a government agency, governmental body or private party under the exercise of the right of eminent domain, or should a partial taking render the remaining portion of the Premises wholly unsuitable for Lessee's use, then this Agreement shall terminate upon such vesting of title or taking of possession. All payments made by a Condemnor on account of any taking of the fee estate by eminent domain shall be made to the County. Lessee shall be entitled to any portions of the condemnation awards relating to any Improvements taken, and Lessee shall, at its sole discretion also be entitled to seek a separate award from the Condemnor for any damages allowable by law, including but not limited to: (i) the removal and relocation Lessee's business, (iii) for the loss of goodwill, (iv) lost profits, (v) the loss and/or damage to any property that Lessee elects or is required not to remove, and (vi) for the loss of use of the Premises by Lessee and the County shall have no right, title or interest in or to any separate award made therefore. It is agreed that Lessee shall have the right to participate in any settlement proceedings with the Condemnor and that the County shall not enter into any binding settlement agreement with the Condemnor, without

the prior written consent of Lessee, which consent shall not be unreasonably withheld. In the event of a partial taking that does not render the remaining portion of the Premises unsuitable for Lessee's use, as determined by Lessee in its sole discretion, this Agreement shall continue in full force and effect (with an equitable reduction in the Quarterly Operating Payments). The Parties shall enter into an amendment of the Agreement to reflect such partial taking.

Section 26. Additional Fees and Charges

If the County is required or elects to pay any sum or sums, or incurs any obligations or expense by reason of the failure, neglect or refusal of Lessee to perform or fulfill anyone or more of the conditions or agreements contained in this Agreement, or as a result of an act, negligence, or omission of Lessee contrary to the said conditions and agreements, the County agrees to pay the sum or sums so paid or the expense so incurred, including all interest, costs, damages and penalties, and the same may be added to any payment thereafter due under this Agreement, and each and every part of the same shall be recoverable by the County in the same manner and with like remedies as if they were originally a part of the payment set forth in **Section 5**.

Section 27. Termination/Default Remedies and Damages

Section 27.01 This Agreement shall terminate at the end of the full term hereof and Lessee shall have no further right or interest in the Premises.

Section 27.02 Lessee may choose to terminate this Agreement for all or part of the Premises by nine (9) months' advance written notice ("Lessee's Notice of Termination") to the County at any time and for any reason. All rights and obligations of the parties hereunder shall terminate as of the termination date set forth in such Lessee's Notice of Termination.

Section 27.03 The following shall constitute an "Event of Default":

(1) Lessee shall fail duly and punctually to pay any installment under **Section 5** of this Agreement, or to make any other payment required hereunder when due to the County and such default shall persist in its failure for a period of six (6) months following the receipt of written notice of such default ("Notice of Default") from the County ("Monetary Default"); or

(2) Lessee shall fail to keep, perform, or observe each and every promise and agreement set forth in this Agreement on its part to be kept, performed, or observed, within thirty (30) Days after receipt of written notice from the County (except where fulfillment of its obligation requires activity over a period of time and Lessee shall have commenced substantially to perform whatever may be required for fulfillment within thirty (30) Days after receipt of notice and continues diligently such substantial performance without interruption except for causes beyond its control); or

(3) Lessee shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof: or consent to the appointment of a receiver, trustee or liquidator of all or substantially all of its property; or

(4) By order of decree of a court Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or, if Lessee is a corporation, by any of the

stockholders of Lessee, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(5) A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against Lessee and shall not be dismissed within ninety (90) Days after the filing thereof; or

(6) By or pursuant to, or under authority of any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer having jurisdiction, a receiver, trustee, or liquidator shall take possession or control of all or substantially all of the Property of Lessee and such possession or control shall continue in effect for a period of ninety (90) Days.

The events described in subsections (3), (4), (5), or (6) above are collectively referred to herein as a "Non-Monetary Event of Default."

Section 27.04 Upon the occurrence of either a Monetary or a Non-Monetary Event of Default other than an Event of Default described in *Section 27.03(2)*, and after the applicable cure periods have elapsed, or at any time thereafter during the continuance thereof or during the term of this Agreement, the County shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate this Agreement and/or evict Lessee from the Property upon the date specified in the a notice of termination ("Notice of Termination"), which date shall not be less than thirty (30) ("Termination Date")(in addition to the initial written notice of default as described in *Section 27.03*), such termination to be effective upon the date specified in such notice in the event Lessee has not cured the default ("Termination Date"). In such case, Lessee's rights to the possession of the Property shall end absolutely as of the Termination Date as fully and completely and with the same force and effect as if the day so specified were the Expiration Date; this Agreement shall also terminate in all respects except for Lessee's liabilities arising prior to, out of, or following the Event(s) of Default and the ensuing termination. .

Section 27.05 Upon the occurrence of an Event of Default described in subsection (2) of *Section 27.03* (after the applicable cure periods have elapsed), County shall not be entitled to terminate this Agreement or evict Lessee from the Property and County's remedies shall be limited to the County's actual damages, costs and out-of-pocket expenses incurred by the County as a result of the Event of Default described in subsection (2) above and/or efforts by the County to cure such Event event of Default (including, without limitation, reasonable attorneys' fees and disbursements).

Section 27.06 No waiver by the County of any default on the part of Lessee in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by Lessee shall be or be construed to be a waiver by the County of any other or subsequent default in performance of any of the valid terms, agreements and conditions.

Section 27.07 Subject to the provisions of **Section 16**, following the date specified in the Notice of Termination provided above, the County may take possession of the Improvements without the necessity of giving Lessee any additional notice to quit or any other further notice, with or without legal process or proceedings, and in so doing the County may remove Lessee's Improvements and make disposition thereof in such manner as the County may deem to be commercially reasonable under the circumstances. If such property not so removed shall be sold, County may receive and retain the proceeds of such sale and shall be the property of County.

Section 27.08 Unless and until the County shall have terminated this Agreement pursuant to *Section 27.04* above, Lessee shall remain fully liable and responsible to perform all of the covenants and to observe all the conditions of this Agreement throughout the remainder of the Term to the early termination date.

Section 27.09 The Parties may each enforce and protect their respective rights hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, and for the enforcement of any other appropriate legal or equitable remedy, including, without limitation, injunctive relief., and for recovery of all money due or to become due from Lessee under any of the provisions of this Agreement. No rights or remedy herein conferred upon or reserved to County or Lessee shall be exclusive of any other right or remedy, but shall be cumulative and in addition to all other rights and remedies given hereunder or now or hereafter existing at law.

Section 27.10 No delay or forbearance by either Party in exercising any right or remedy hereunder, or either Party's undertaking or performing any act or matter which is not expressly required to be undertaken by that Party shall be construed, respectively, to be a waiver of that Party's rights or to represent any agreement by that Party to undertake or perform such act or matter thereafter. Waiver by either Party of any breach by the other Party of any covenant or condition herein contained (which waiver shall be effective only if so expressed in writing) or failure by either Party to exercise any right or remedy in respect of any such breach shall not constitute a waiver or relinquishment for the future of that Party's right to have any such covenant or condition duly performed or observed by the other Party, or of either Party's rights arising because of any subsequent breach of any such covenant or condition nor bar any right or remedy of that Party in respect of such breach or any subsequent breach. County's receipt and acceptance of any payment from Lessee which is tendered not in conformity with the provisions of this Agreement or following an Event of Default (regardless of any endorsement or notation on any check or any statement in any letter accompanying any payment) shall not operate as an accord and satisfaction or a waiver of the right of County to recover any payments then owing by Lessee which are not paid in full.

Section 27.11 Except for the monetary obligations of either party, County and Lessee shall not be in default of this Agreement because of such party's inability to perform the covenants and obligations set forth herein during the continuance of any period of Force Majeure, except as may otherwise be expressly specified in this Agreement.

Section 27.12 In the event County shall fail to keep, perform, and observe each and every promise and agreement set forth in this Agreement on its part to be kept, performed, or observed, within thirty (30) Days after receipt of written notice of default thereunder from the Lessee (except where fulfillment of its obligation requires activity over a period of time, and County shall have commenced substantially to perform whatever may be required for fulfillment within thirty (30) Days after receipt of the written notice and continues diligently such substantial performance without interruption except for causes beyond its control), the same shall constitute a default on the part of the County for which Lessee shall have all rights available under law.

Section 27.13 In no event shall either party be liable in any way, regardless of the form in which any legal or equitable action may be brought (whether in tort, contract, strict liability or otherwise), for any loss of use, interruption of business, lost profits, sales, data or goodwill, or any special, incidental, indirect, punitive, or consequential damages whatsoever, however caused, even if the Parties have been advised of the possibility of such loss or damage and regardless of whether these limitations cause any remedy to fail its essential purpose. The limitations of liability in this *Section 27.11* are material conditions to the Parties entering into this Agreement and shall survive the termination or expiration of this Agreement.

Section 28. Force Majeure

Section 28.01 Neither Party will be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or have caused an uncured Event of Default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

Section 28.02 In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely notice shall not affect such Party's ability to assert Force Majeure unless the delay in giving notice materially prejudices the other Party.

Section 29. Notices

Section 29.01 Any communication, notice or other submission necessary or required to be made by the parties regarding this Agreement except with respect to *Section 29.02* shall be deemed to have been duly made upon receipt by: (a) if to Lessee, at Lessee's address first set forth above, and (b) if to County, Suffolk County Department of Economic Development and Workforce Housing, Aviation Division, Attention: Airport Manager, Francis S. Gabreski Airport, Westhampton Beach, NY 11978 or, (c) at such other address as Lessee or County, respectively, may designate in writing.

Section 29.02 Any communication or notice regarding indemnification, termination, or litigation by either party to the other shall be in writing and shall be deemed to be duly given only if delivered: (i) personally (personal service on County must be pursuant to New York Civil Practice Law and Rules Section 311); (ii) by nationally recognized overnight courier: or (iii) mailed by registered or certified mail in a postpaid envelope addressed: (a) if to County, to to the Department at the Department' address first above set forth; with a copy to the Suffolk County Department of Law, Attention: Suffolk County Attorney, 100 Veterans Memorial Highway, P.O. Box 6100, Hauppauge, New York 11788-0099; and (b) if to Lessee, at Lessee's address first above set forth, or at such other address as Lessee or County, respectively, may designate in writing.

Section 29.03 Notice shall be deemed to have been duly given (1) if delivered personally, upon delivery thereof on a Business Day or if not a Business Day, then the next succeeding Business Day, (2) if by nationally recognized overnight courier, the first Business Day subsequent to transmittal and (3) if mailed by registered or certified mail, upon the seventh Business Day after the mailing thereof. Any notice by either party to the other with respect to the commencement of any law suit or legal proceeding shall be effected pursuant to and governed by the New York Civil Practice Law and Rules or the Federal Rules of Civil Procedure, as applicable.

Section 30. Broker

Lessee and the County each represents and warrants that no broker has been concerned on its behalf in the negotiation of this Agreement and that there is no such broker who is or may be entitled to be paid a commission in connection therewith. Each party shall indemnify and save harmless the other party of and from any claim for commission or brokerage made by any and all persons, firms or corporations whatsoever for services rendered to such party, whether or not such claims, demands, causes of action, liabilities, etc., are made or asserted before or after termination or expiration of this Agreement (to include reasonable attorneys and other professional fees).

Section 31. Paragraph Headings

The section and subsection headings, if any, in this Agreement, are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of intent of any provision hereof.

Section 32. Legislative Approval

This Agreement is subject to the approval of the Suffolk County Legislature and shall not become effective until fully executed.

Section 33. Waiver of Jury Trial

The County and Lessee, to the extent allowed by law, hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the relationship of the County and Lessee, Lessee's use or occupancy of the Premises, any claim of injury or damage, or any emergency statutory or any other statutory remedy.

Section 34. Off-set of Arrears or Default

Lessee warrants that it is not, and shall not be, during the Term of this Agreement, in arrears to the County for taxes or upon debt or contract and is not, and shall not be during the term of this Agreement, in default as surety, contractor or otherwise on any obligation to the County, and the Lessee agrees that the County may withhold the amount of any such arrearage or default from amounts payable to the Lessee under this Agreement.

Section 35. Cooperation on Claims

Section 35.01 The Parties each agree to render diligently to the other any and all cooperation, without additional compensation, that may be required to defend the Party against any claims, demand, or action that may be brought against the other in connection with this Agreement.

Section 35.02 The County shall fully support and cooperate with Lessee in the conduct of its operations and the exercise of its rights under this Agreement [including with Lessee's efforts to (a) obtain from any Governmental Authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights or (b) sell any portion of the Solar Energy System, assign or otherwise transfer all or any part of or interest under this Agreement or obtain any financing in accordance with the provisions of this Agreement, and the County shall perform all such acts including executing and delivering maps, instruments and documents within twenty (20) Days after receipt of a written request made from time to time by Lessee, as Lessee may reasonably specify to fully effectuate

each and all of the purposes and intent of the Agreement. Without limiting the generality of the foregoing, within ten (10) Days after receipt of a written request made from time to time by either Party to the other, the Parties shall: enter into any reasonable amendment hereto (aa) to correct an error in this Agreement, (bb) to amend the legal description attached hereto, including replacing said legal description with a revised description prepared or provided by Lessee's surveyor or title company. Within Ten (10) Days after receipt of a written request made from time to time by the Lessee, the County shall: (i) execute and deliver to Lessee any owner's affidavit reasonably requested by any title company or Lessee; or (ii) enter into any reasonable consent and subordination and nondisturbance agreement with any Lender, or deliver any estoppel reasonably requested by such Lender, within ten (10) Days after written request from Lessee or any Lender as to any of the foregoing. Without limiting the generality of the foregoing, the County shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement submitted in accordance with the terms and conditions of this Agreement at any administrative, judicial, legislative or other level.

Section 36. Intentionally Omitted.

Section 37. Not a Co-Partnership or Joint Venture

Nothing herein contained shall create or be construed as creating a co-partnership, Joint Venture or any other association between the County and Lessee other than the relationship of landlord and tenant.

Section 38. Independent Contractor

It is expressly agreed that Lessee's status hereunder is that of an independent contractor. Neither Lessee nor any person authorized by Lessee to use the Premises shall be considered employees of the County for any purpose. The relationship of the County to Lessee is that of landlord-tenant and Lessee, in accordance with its status as such, covenants and agrees that it shall conduct itself consistent with such status, that it will neither hold itself out as nor claim to be an officer, agent, or employee of the County by reason hereof, and that Lessee, its owners and employees, shall not, by reason hereof, make any claims, demands or application to or for any right of privilege including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership of credit as officers, employees or agents of the County.

Section 39. County Representatives

It is expressly understood and agreed by and between the parties hereto that the officers, officials, employees, and agents of the County, and the Commissioners of the Department of Public Works and the Department of Environment and Energy, and their officers and agents are acting in a representative capacity for the County of Suffolk and not for their own benefit, and that neither Lessee nor its officers, employees agents or representatives shall have any claim against them or any of them as individuals in any event whatsoever.

Section 40. No Credit

Lessee agrees that this Agreement shall not be pledged, hypothecated, or put up as security for a loan, credit or for any reason whatsoever, except as may otherwise be permitted in this Agreement.

Section 41. No Implied Waiver

No waiver shall be inferred from any failure or forbearance of either Party to enforce any provision of this Agreement in any particular instance or instances, but the same shall otherwise remain in full force and effect notwithstanding any such failure or forbearance.

Section 42. Certification

The parties to this Agreement hereby certify that, other than the funds provided in this Agreement and other valid Agreements with the COUNTY, there is no known relationship within the third degree of consanguinity, life partner or business, commercial, economic, or financial relationship between the parties, the signatories to this Agreement, and any partners, members, directors, or shareholders of five percent (5%) (or more) of any party to this Agreement.

Section 43. Conflicts of Interest

Section 43.01 Lessee agrees that it will not, during the term of this Agreement, engage in any activity that is contrary to and/or in conflict with the goals and purposes of the County.

Section 43.02 Lessee is charged with the duty to disclose to the County the existence of any such adverse interests, whether existing or potential. This duty shall continue during the term of this Agreement. The determination as to whether or when a conflict exists or may potentially exist shall ultimately be made by the County Attorney after full disclosure is obtained.

Section 44. Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk, Suffolk County Code Chapter 234, as more fully set forth in the **Exhibit F** entitled "Suffolk County Legislative Requirements," attached hereto and incorporated herein by reference. In accordance with this law, Contractor or employer, as the case may be, and any subcontractor or owner, as the case may be, agree to maintain the documentation mandated to be kept by this law on the Construction Site at all times. Contractor or employer, as the case may be, and any subcontractor or owner, as the case may be, further agree that employee sign-in sheets and register/log books shall be kept on the Construction Site at all times during working hours and all covered employees, as defined in the law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the Construction Site during such working hours.

Section 45. Suffolk County Legislative Requirements

The Parties agree to be bound by the terms of the "Suffolk County Legislative Requirements," attached hereto as **Exhibit F**, and made a part hereof. Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at www.co.suffolk<http://www.co.suffolk.ny.us>. Click on "Laws of Suffolk County" under "Suffolk County Links."

Section 46. Governing Law

Section 46.01 This Agreement shall be governed by the laws of the State of New York. In the event of any dispute or litigation, the venue of any proceeding to determine the rights and liabilities of the respective parties arising under this Agreement shall be in New York Supreme Court, Suffolk County; or

in the event of a proceeding in the federal courts, in the District Court for the Eastern District of New York.

Section 46.02 Notwithstanding anything herein contained to the contrary, any summary proceedings against Lessee may be instituted in accordance with Article 7 of the New York Real Property Actions and Proceedings Law.

Section 47. Severability

It is expressly agreed that if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby; and every other term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.

Section 48. Interpretation

Each Party has reviewed this Agreement and has been given an opportunity to obtain the assistance of counsel, and any rule of construction holding that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement.

Section 49. Memorandum

The County and Lessee shall execute in recordable form and Lessee shall record, a memorandum of this Agreement substantially in the form of **Exhibit G**. The County consents to the recordation of the interest of any Lender or assignee of Lessee's interest in this Agreement.

Section 50. Execution in Counterparts

This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument, and each of which shall be deemed an original.

Section 51. Entire Agreement

Section 51.01 This Agreement consists of the following: **Sections 1** through **51** inclusive. The foregoing constitutes the entire agreement of the parties on the subject matter hereof. It may not be changed, modified, discharged or extended except by written instrument duly executed by the County and Lessee.

Section 51.02 References contained herein to Sections, Exhibits, and/or Schedules shall be deemed to be references to the Sections, Exhibits, and/or Schedules of and to this Agreement unless specified to the contrary.

- Signature Page Follows –

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first set forth above.

Eastern Long Island Solar Project, LLC

By: **enXco Asset Holdings, Inc.**
Its: Managing Member

By: _____
Name: _____
Title:
Date:

COUNTY OF SUFFOLK

By: _____
Title: Deputy County Executive
Date: _____

APPROVED BY:
DEPARTMENT OF ENVIRONMENT AND ENERGY

By: _____
Name Carrie Meek-Gallagher
Title: Commissioner
Date: _____

APPROVED BY:
DEPARTMENT OF PUBLIC WORKS

By: _____
Name:
Title:
Date:

APPROVED AS TO LEGALITY
CHRISTINE MALAFI
Suffolk County Attorney

By: _____
Basia Deren Braddish
Asst. County Attorney
Date: _____

ACKNOWLEDGEMENT

STATE OF NEW YORK}
SS:
COUNTY OF SUFFOLK}

On the ____ day of _____ in the year 2010 before me, the undersigned, personally appeared_____*[name]*, _____*[Title]* personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF NEW YORK}
SS:
COUNTY OF SUFFOLK}

On the ____ day of _____ in the year 2010 before me, the undersigned, personally appeared _____*[Name]*, _____*[Title]*, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

_____
Notary Public

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2010, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary's Signature

[Notary Seal]

EXHIBIT A
DESCRIPTION OF PROPERTY

EXHIBIT B
CASH FLOW PAYMENTS

EXHIBIT C
APPROVED SITE PLAN

EXHIBIT D
FORM OF LETTER OF CREDIT/BOND

EXHIBIT F
LEGISLATIVE REQUIREMENTS

1. Contractor's/Vendor's Public Disclosure Statement

The Contractor represents and warrants that it has filed with the Comptroller of Suffolk County the verified public disclosure statement required by Suffolk County Administrative Code Article V, Section A5-7 and shall file an update of such statement with the said Comptroller on or before the 31st day of January in each year of this Agreement's duration. The Contractor acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of this Agreement, for which the County shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Agreement.

Required Form: Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

2. Living Wage Law

This Agreement is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

The Contractor represents and warrants that it has read and shall comply with the requirements of Suffolk County Code Chapter 347, Suffolk County Local Law No. 12-2001, the Living Wage Law.

Required Forms: Suffolk County Living Wage Form LW-1; entitled "Suffolk County Department of Labor – Living Wage Unit Notice of Application for County Compensation (Contract)"

Suffolk County Living Wage Form LW-38; entitled "Suffolk County Department of Labor – Living Wage Unit Living Wage Certification/Declaration – Subject To Audit"

3. Use of County Resources to Interfere with Collective Bargaining Activities Local Law No. 26-2003

The Contractor represents and warrants that it has read and is familiar with the requirements of Chapter 466, Article 1 of the Suffolk County Local Laws, "Use of County Resources to Interfere with Collective Bargaining Activities". County Contractors (as defined) shall comply with all requirements of Local Law No. 26-2003 including the following prohibitions:

a. The Contractor shall not use County funds to assist, promote, or deter union organizing.

b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.

c. The County of Suffolk shall not use County funds to assist, promote, or deter union organizing.

d. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

If Contractor services are performed on County property the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, nonintimidation agreement and a majority authorization card agreement.

If Contractor services are for the provision of human services and such services are not to be performed on County property, the Contractor must adopt, at the least, a neutrality agreement.

Under the provisions of Local Law No. 26-2003, the County shall have the authority, under appropriate circumstances, to terminate this Agreement and to seek other remedies as set forth therein, for violations of this Law.

Required Form: Suffolk County Labor Law Form DOL-LO1; entitled "Suffolk County Department of Labor – Labor Mediation Unit Union Organizing Certification/Declaration – Subject to Audit"

4. Lawful Hiring of Employees Law

This Agreement is subject to the Lawful Hiring of Employees Law of the County of Suffolk (Local Law 52-2006). It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of

covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the contract, and whenever a new contractor or subcontractor is hired under the terms of the contract.

The Contractor acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of this agreement.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate this Agreement for violations of this Law and to seek other remedies available under the law.

The Contractor represents and warrants that it has read, is in compliance with, and shall comply with the requirements of Suffolk County Code Chapter 234, Suffolk County Local Law No. 52-2006, the Lawful Hiring of Employees Law.

Required Forms: Suffolk County Lawful Hiring of Employees Law Form LHE-1; entitled "Suffolk County Department of Labor –"Notice Of Application To Certify Compliance With Federal Law (8 U.S.C. SECTION 1324a) With Respect To Lawful Hiring of Employees"

"Affidavit Of Compliance With The Requirements Of 8 U.S.C. Section 1324a With Respect To Lawful Hiring Of Employees" Form LHE-2.

5. Gratuities

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of Suffolk County or New York State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement, and that the signer of this Agreement has read and is familiar with the provisions of Local Law No. 32-1980 of Suffolk County (Chapter 386 of the Suffolk County Code).

6. Prohibition Against Contracting with Corporations that Reincorporate Overseas

The Contractor represents that it is in compliance with Suffolk County Administrative Code Article IV, §§A4-13 and A4-14, found in Suffolk County Local Law No. 20-2004, entitled "A Local Law To Amend Local Law No. 5-1993, To Prohibit The County of Suffolk From Contracting With Corporations That Reincorporate Overseas." Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

7. **Child Sexual Abuse Reporting Policy**

The Contractor agrees to comply with Chapter 577, Article IV, of the Suffolk County Code, entitled "Child Sexual Abuse Reporting Policy", as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of this Agreement with regard to child sexual abuse reporting policy.

8. **Non Responsible Bidder**

The Contractor represents and warrants that it has read and is familiar with the provisions of Suffolk County Code Chapter 143, Article II, §§143-5 through 143-9. Upon signing this Agreement the Contractor certifies that he, she, it, or they have not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under the provision of Section 143-5 of the Suffolk County Code under "Nonresponsible Bidder."

9. **Use of Funds in Prosecution of Civil Actions Prohibited**

Pursuant to the Suffolk County Code Section §590-3, the Contractor represents that it shall not use any of the moneys received under this Agreement, either directly or indirectly, in connection with the prosecution of any civil action against the County of Suffolk or any of its programs, funded by the County, in part or in whole, in any jurisdiction or any judicial or administrative forum.

10. **Suffolk County Local Laws**

Suffolk County Local Laws, Rules and Regulations can be found on the Suffolk County web site at www.co.suffolk<http://www.co.suffolk.ny.us>. Click on "Laws of Suffolk County" under "Suffolk County Links."

End of Text for Exhibit D

EXHIBIT G
FORM OF MEMORANDUM OF LEASE

Recording Requested By and When Recorded Return To:
@

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, dated as of the ____ day of _____, 2010, between, COUNTY OF SUFFOLK, a municipal corporation of the State of New York having an office at H. Lee Dennison Building, 100 Veterans Memorial Highway, Hauppauge, New York 11788 (hereinafter "Landlord"), and Eastern Long Island Solar Power Project, LLC, a Delaware limited liability company, with an address at c/o enXco, Inc., 700 La Terraza Blvd. Ste 200, Escondido, CA 92025 (hereinafter "Tenant").

WITNESSETH:

1. **DEFINITIONS**. Capitalized terms used herein that are not otherwise defined shall have the meanings ascribed to such terms in the Lease (as hereinafter defined).

2. **DEMISED PREMISES.** Landlord and Tenant have entered into a Lease dated as of _____ ____, 2010 (the "Lease"), pursuant to which Tenant has leased from Landlord certain land located at _____, in the Township of _____, County of Suffolk, State of New York (the "Premises") and further described on the legal description attached hereto and made a part hereof as Exhibit A.

3. **TERM.** The term of the Lease (the "Term") shall begin on the Commencement Date and shall remain in effect until the later to occur of (a) the twenty-first (21st) anniversary of the Operations Date, or (b) the date which is three (3) months following the expiration of Lessee's power purchase agreement with LIPA, unless earlier terminated as provided in the Lease.

4. **PURPOSE.** The purpose of this instrument is to give notice of the Lease and all of its terms, covenants and conditions to the same extent as if the Lease were fully set forth herein. This instrument shall in no way amend or be used to interpret the Lease, and in the event of any conflict or inconsistency between any of the terms and conditions of this Memorandum of Lease and any term and/or condition of the Lease, the term and/or condition of the Lease shall govern and control.

5. **EASEMENT.** Tenant has any easement to enter upon and construct certain improvements in the Easement Area in accordance with the provisions of the Lease.

6. **COUNTERPARTS.** This Memorandum of Lease may be executed in counterparts, each of which shall be deemed to be and required and all of which, when taken together, shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

COUNTY OF SUFFOLK

By: _____
Name:
Title:

TENANT:

EASTERN LONG ISLAND SOLAR PROJECT, LLC

By:_____
Name:
Title:

STATE OF _____)
) ss.:
COUNTY OF _____)

On the _____ day of _____ in the year 2010 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Signature and Office of individual
taking acknowledgment

STATE OF _____)
) ss.:
COUNTY OF _____)

On the _____ day of _____ in the year 2010 before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
Signature and Office of individual
taking acknowledgment

SOLAR ENERGY/ELECTRIC INTERCONNECTION EASEMENT

THIS INDENTURE, made this ____ day of _____ , 2010 , by and between County of Suffolk, a municipal corporation of the State of New York with offices at Suffolk County Center, Center Drive, Riverhead, New York 11901 (hereinafter referred to as "Grantor"); and Long Island Lighting Company d/b/a LIPA ("LIPA"), a New York corporation, having its principal office at 333 Earl Ovington Blvd., Suite 403, Uniondale, New York 11553 (hereinafter referred to as "Grantee"). (Grantor and Grantee are collectively referred to herein as the "Parties".)

RECITALS

WHEREAS, the Grantor is the owner in fee simple absolute of certain parcels of land and all the estate therein, which parcels are located in the County of Suffolk, State of New York and are designated on the Suffolk County Tax Map as set forth in "Exhibit A" which is attached hereto and made a part hereof (collectively, the "County Property");

WHEREAS, Grantee is willing to accept an easement over the County Property (the "Easement") for the uses and purposes and on the terms and conditions herein set forth;

WHEREAS, the Long Island Power Authority ("Authority"), an affiliate of Grantee, and Eastern Long Island Solar Project, LLC ("Eastern") are parties to a certain Contract for the Purchase and Sale of Solar Energy, Renewable Energy Certificates and Capacity dated as of [date], as same may be amended, restated or otherwise modified from time to time (the "PPA"), pursuant to which Eastern is to construct solar generating facilities ("SGFs") and related electrical transmission lines on the County Property;

WHEREAS, pursuant to the PPA, Authority is to cause Grantee to construct, install and maintain electrical interconnection lines between Eastern's SGFs and Grantee's electrical system to be located on the parcels identified in Exhibit A and in accordance with the terms and conditions set forth in that certain Solar Lease between Eastern, as Lessee and Grantor, as Lessor, dated as of _____, 2010 (the "Solar Lease").

NOW, THEREFORE, for and in consideration of the premises and the sum of _____ AND NO/100 DOLLARS ($_____.00) and other good and valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, Grantor does hereby grant and convey to the Grantee, and its successors and assigns, an easement in, on, under, over, upon, across and through a portion of the County Property described in Schedule "A" (hereinafter referred to as the "Easement Area"), attached hereto and made a part hereof, of which a map or survey is also attached herein and made a part hereof as Schedule "B". **[LIPA NOTE: Separate legal**

descriptions will be provided in Schedule "A" and separate maps provided in Schedule "B" for each of the seven (7) sites].

1. **Recitals.** The Parties acknowledge that the foregoing recitals are true and correct and hereby incorporated into this Easement as if fully set forth herein.

2. **Grant of Easement.** Grantor does hereby grant and convey to the Grantee and its agents, successors and assigns, a non-exclusive easement in, on, under, over, upon, across and through the Easement Area for utility purposes including, but not limited to constructing, reconstructing, relocating, operating, repairing, maintaining and, at their pleasure removing overhead, underground or grade level electric interconnection systems, including but not limited to interconnection structures, poles, wires, cables, guys, anchors, switchgear and transformers together with the necessary manholes, conduits, appurtenances and accessories (collectively, the "Utility Facilities") as said Grantee may now and from time to time deem necessary, all within the Easement Area, as well as ingress and egress in, over, under, upon, across and through the Easement Area, with full rights and authority to enter upon and excavate the Easement Area.

3. **Use of Easement**. Grantee shall have the right to do all things necessary, useful or convenient for the purpose outlined in Section 2 hereof. Grantor hereby covenants with Grantee that Grantee shall have quiet and peaceful possession, use and enjoyment of the easement granted herein. The Grantee agrees to reasonably restore any Easement Area or other areas of the County Property disturbed by the Grantee to a condition reasonably similar to that which existed prior to the disturbance.

4. **Access From Street**. The privilege of such access from the street to the Easement Area as is necessary for the enjoyment of the easements and right-of-ways herein granted.

5. **Ownership of Utility Facilities**. The Utility Facilities from time to time installed, constructed and maintained by Grantee in the Easement Area shall at all times be and remain the property of Grantee, and be maintained and serviced exclusively by Grantee.

6. **Warranty of Title**. Grantor covenants that it is seized of the Property and, for itself, its successors and assigns, forever warrants its title thereto and will defend the easements and right-of-ways herein granted, forever, against all lawful claims and demands.

7. **Covenants Running with the Land**. This Easement, and all the rights, conditions, covenants and interests set forth herein and created hereby are intended to and shall run with the land and shall be binding upon and inuring to the benefit of the Parties hereto and their respective successors and assigns.

8. **Approvals/Effect and Duration of Easement**. [This Easement shall become effective when executed by both Parties and in accordance with Section 112 of

the New York State Finance Law, shall not be valid, effective or binding upon the Parties until the approval of the Comptroller of the State of New York, the New York State Attorney General and the approval of the Suffolk County Legislature have been received and the Parties agree to be bound by the clauses in Appendix A hereto, which is made a part of this Agreement.] **[LIPA NOTE: Subject to deletion depending on the parties' agreement to nominal consideration for the 20 year term. If the consideration has an estimated total value of $50K for the entire term, then the agreement is subject to OSC review and LIPA would be required to include the Appendix A provisions.]** This Easement shall remain in full force and effect until the later to occur of: (i) the twenty-first (21st) anniversary of the date on which electricity is generated, delivered and sold (excluding start-up and testing) by Eastern to LIPA for the last SGF to be installed, in accordance with the terms and conditions set forth in the PPA or, (ii) the date which is three (3) months after the expiration of the PPA.

9. **Rights Reserved**. The easement rights granted herein are non-exclusive in nature and are subject to all matters of record. Grantor shall have the right to use the Easement Area, or any portion thereof, or any property of Grantor adjoining the Easement Area for any purpose not inconsistent with the full use and enjoyment of the rights granted herein in favor of Grantee. Grantor agrees not to erect or maintain within the Easement Area any permanent buildings, structures or physical obstructions of any kind, including trees and shrubbery, or permit the same to be so erected or maintained, except such as Grantee may specifically consent to in writing, which consent shall not be unreasonably withheld or delayed.

10. **Compliance with Requirements**. Grantee covenants, warrants and represents that it shall, at all times, comply with any and all orders, directives, requests and rules and regulations of the Grantor and of each and every municipality, department and/or agency having jurisdiction of any work to be performed in the Easement Area.

11. **No Gratuities**. Grantor represents and warrants that neither the Grantor nor any official, officer, or employee of Grantor, has offered or given any gratuity to any official, employee or agent of Grantee, Suffolk County, New York State or any political party with the purpose or intent of securing favorable treatment with respect to the awarding or amending of an agreement, or the making of any determinations with respect to the performance of an agreement, and that Grantor has read and is familiar with the provisions of Suffolk County Local Law Number 32-1980.

12. **Execution**. The Parties warrant and represent that their execution of this Easement has been properly authorized.

13. **No Waiver**. This Easement is not a waiver of any claim for damage or for use of any property not restored promptly to Grantor, nor a waiver of any claim for personal injury.

14. **Miscellaneous**. No modification or amendment of this Easement shall be of any force or effect unless in writing executed by both Grantor and Grantee and recorded in the Suffolk County Clerk's Office. This Easement sets forth the entire agreement between Grantor and Grantee relating to the easement and all subject matter herein and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, between the Parties.

IN WITNESS WHEREOF, the Grantor and Grantee have duly executed this Easement as of the date first above written.

The Long Island Lighting Company d/b/a LIPA

By: _____
Name:
Title:

Date: _____

County of Suffolk

By: _____
Name:
Deputy County Executive

Date: _____

Approved as to Legality:
Christine Malafi, County Attorney

By: _____
Basia Deren Braddish
Assistant County Attorney

Date: _____

Approved:
Division of Real Estate

By: _____
Name:
Title:

Date: _____

[Approved By:
Office of the State Comptroller General

By: _____
Name:
Title:

Date: _____

Approved As To Form:
Office of the New York State Attorney

By: _____
Name:
Title:

Date: _____

See Section 8 for conditions to deletion]

STATE OF NEW YORK}
SS:
COUNTY OF NASSAU}

On the _____day of _____ in the year 2009 before me, the undersigned, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
(signature and office of individual taking acknowledgement)

STATE OF NEW YORK}
SS:
COUNTY OF }

On the _____day of _____ in the year 2009 before me, the undersigned, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individuals(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_____
(signature and office of individual taking acknowledgement)

EXHIBIT A

1. DISTRICT 0000, SECTION 000.00, BLOCK 00.00, P/O LOT 000.000 (Riverhead County Center Complex, Riverhead)

2. DISTRICT 0000, SECTION 000.00, BLOCK 00.00, P/O LOT 000.000 (H. Lee Dennison Complex, Hauppauge)

3. DISTRICT 0000, SECTION 000.00, BLOCK 00.00, P/O LOT 000.000 (Cohalan Court Complex, Central Islip)

4. DISTRICT 0000, SECTION 000.00, BLOCK 00.00, P/O LOT (Brentwood LIRR Station, Brentwood)

5. DISTRICT 0000, SECTION 000.00, BLOCK 00.00, P/O LOT (Ronkonkoma LIRR Station, Ronkonkoma)

6. DISTRICT 0000, SECTION 000.00, BLOCK 00.00, P/O LOT (Deer Park LIRR Station, Deer Park)

7. DISTRICT 0000, SECTION 000.00, BLOCK 00.00, P/O LOT (North County Complex, Smithtown)

SCHEDULE A

[Legal Description of Easement Area]

SCHEDULE B

[Map/Survey of Easement Area]

APPENDIX A

[State Disclosures, ST-220-CA, ST-220-TD and Vendor Questionnaire depending upon valuation of Easement Area]

SUFFOLK COUNTY
County Legislature
RIVERHEAD, NY

This is to Certify That I, TIM LAUBE, Clerk of the County Legislature of the County of Suffolk, have compared the foregoing copy of resolution with the original resolution now on file in this office, and which was duly adopted by the County Legislature of said County on February 2, 2010 and that the same is a true and correct transcript of said resolution and of the whole thereof.

In Witness Whereof, I have hereunto set my hand and the official seal of the County Legislature of the County of Suffolk.

Tim Laube

Clerk of the Legislature

Intro. Res. 1043 Res. No. 28 February 2, 2010

Motion:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Co-Sponsors:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano, Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

Second:
Romaine, Schneiderman, Browning, Muratore, Losquadro
Eddington, Montano,Cilmi, Lindsay, Viloria-Fisher, Barraga,
Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE	✓				
2	Jay H. SCHNEIDERMAN	✓				
3	Kate M. BROWNING	✓				
4	Thomas MURATORE	✓				
6	Daniel P. LOSQUADRO	✓				
7	Jack EDDINGTON	✓				
9	Ricardo MONTANO		✓			
10	Thomas CILMI	✓				
11	Thomas F. BARRAGA	✓				
12	John M. KENNEDY, JR.	✓				
13	Lynne C. NOWICK	✓				
14	Wayne R. HORSLEY	✓				
15	DuWayne GREGORY	✓				
16	Steven H. STERN	✓				
17	Lou D'AMARO	✓				
18	Jon COOPER	✓				
5	Vivian VILORIA-FISHER, D.P.O.	✓				
8	William J. LINDSAY, P.O.	✓				
	Totals	17	1	—	—	—

MOTION

X Approve
___ Table: _____
___ Send To Committee
___ Table Subject To Call
___ Lay On The Table
___ Discharge
___ Take Out of Order
___ Reconsider
___ Waive Rule ___
___ Override Veto
___ Close
___ Recess

APPROVED X FAILED ___
No Motion ___ No Second ___

RESOLUTION DECLARED

X ADOPTED
___ NOT ADOPTED

Roll Call X Voice Vote ___

Tim Laube
Tim Laube, Clerk of the Legislature