

LA0013

LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

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

Premises: Part of the Property known as the Brentwood LIRR

Brentwood, New York

Date: February 26, 2010

TABLE OF CONTENTS

	<u>Page</u>
Section 1: Definitions	1
Section 2: Purpose	5
Section 3: Description	6
Section 4: Term	7
Section 5: Payments to County	7
Section 6: Late Charges	8
Section 7: Lessee's Duties and Obligations	8
Section 8: Prevailing Wage	11
Section 9: Other Construction By Lessee	12
Section 10: Requirements of Governmental Agencies	12
Section 11: Liens	13
Section 12: Waiver of Nuisance	13
Section 13: Temporary Storage	13
Section 14: Insurance	14
Section 15: Indemnity and Defense	16
Section 16: Removal and Restoration	17
Section 17: Ownership Attributes	18
Section 18: Hazardous Substances and Waste	18
Section 19: Signs	19
Section 20: Quiet Enjoyment	19
Section 21: Representations, Warranties and Covenants	19
Section 22: Confidentiality	20
Section 23: Successors and Assigns	20
Section 24: Leasehold Financing	21
Section 25: Condemnation	23
Section 26: Additional Fees and Charges	23
Section 27: Termination/Default Remedies and Damages	23
Section 28: Force Majeure	26
Section 29: Notices	27
Section 30: Broker	27
Section 31: Paragraph Headings	27

Section 32: Legislative Approval	27
Section 33: Waiver of Jury Trial	27
Section 34: Off-set of Arrears or Default	28
Section 35: Cooperation on Claims	28
Section 36: Intentionally Omitted	28
Section 37: Local Preference	28
Section 38: Not a Co-Partnership or Joint Venture	29
Section 39: Independent Contractor	29
Section 40: County Representatives	29
Section 41: No Credit	29
Section 42: No Implied Waiver	29
Section 43: Certification	29
Section 44: Conflicts of Interest	30
Section 45: Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction	30
Section 46: Suffolk County Legislative Requirements	30
Section 47: Governing Law	30
Section 48: Severability	30
Section 49: Interpretations	31
Section 50: Memorandum	31
Section 51: Execution in Counterparts	31
Section 52: Entire Agreement	31
Signature Page	32

EXHIBITS

- Exhibit A – Descriptions of Property
- Exhibit B – Cash Flow Payments
- Exhibit C – Approved Site Plan
- Exhibit D – Form of Surety Bond
- Exhibit E – Liens and Encumbrances
- Exhibit F – Legislative Requirements
- Exhibit G – Form of Memorandum of Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), made as of March 22 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 last date of execution of this Agreement.

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

"**Control**" and the terms "controlled by" and "under common control with" mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity or ownership interest of such Person.

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: means 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: means 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",

Brentwood LIRR Station

“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: means 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 first 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.

Person: means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, general partnership, limited liability company or government or any agency or political subdivision thereof or other entity;

PILOTS: means payments in lieu of taxes.

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

Pre-Operating Annual Payments: means ^{Two Thousand Three Hundred Eighty-Eight & 76/100 Dollars} \$ 2,388.76~~00~~ per annum. *FN* *ckk*

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

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Principal: when used with respect to any Person, means the chief executive officer, the chief financial officer, the chief operating officer or the chairperson of such Person or a Person that directly or indirectly through one of more intermediaries controls such Person.

Prohibited Person: means (i) any Person (A) that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County unless such default or breach has been waived in writing by the County, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County, unless such default or breach has been waived in writing by the County, or (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Property: means the County property a portion of which is the subject of this Agreement, described in *Section 3.01*.

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. 28-2010 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)*.

Brentwood LIRR Station

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. 28-2010 of the Suffolk County Legislature, dated the 4th day of February, 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 Premises 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

Brentwood LIRR Station

Lessee shall have an obligation to obtain the 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 the 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 Premises 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 Numbers 500-138-01-003.002, located at the intersection of Brentwood Road and County Road 100 in the town of Islip and further identified as Brentwood LIRR Station, Brentwood, New York (the "Property"), in connection

Brentwood LIRR Station

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 any buildings, structures, improvements, additions, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or there under pursuant to the terms 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 Premises 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 the County shall not be liable for any latent or patent defect thereon. Lessee may use the Premises 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 Premises 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 the 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 until the Operations Date.

Section 5.02 Commencing with the Operations Date, Lessee shall make quarterly payments to the 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, no later than 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

Brentwood LIRR Station

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 [Intentionally Omitted]

Section 5.05 Nothing contained in this **Section 5** shall affect the survival of the obligations of Lessee as set forth in this Agreement.

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 the County at the County's address set forth herein or at such other place as the 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% per month 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

Brentwood LIRR Station

any loss or damages resulting from the use thereof. Notwithstanding any rights the County may have reserved to itself under this Agreement, the County shall have no liabilities or obligations of any kind to any contractors or subcontractors engaged by Lessee or for any other matter in connection with the construction of the Improvements. Lessee shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fine, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence, or any acts or omissions of Lessee's contractors or subcontractors, including reimbursement of the cost of reasonable attorneys' fees and other professional fees, incurred by the County, its officers, agents servants, representatives, and employees in any action or proceeding arising or alleged to arise out of, or in connection with construction associated with the Improvements, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

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. The construction schedule shall provide for the completion of all Improvements within twelve (12) months of the receipt of building permits.

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 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 the 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. The County shall not levy any personal property taxes, special assessments or real property taxes on the Solar Energy System during the Term.

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 The 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.

Brentwood LIRR Station

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 or County's employees, agents or representatives, 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 I written report to the Department, setting forth the findings of such survey and delineating any remedial actions to be taken within forty-five (45) Days of its receipt of such survey.

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. Lessee shall have no obligation for the routine maintenance of the lighting or the electrical charges attributable to the operation of the lighting.

Section 7.18 Lessee understands that the Property may be located in high wind region of New York State. All designs shall be prepared with a reasonable degree of certainty to 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

Regardless of whether the construction of the Improvements is deemed a public works project for purposes of determining applicability of Section 220 of the Labor Law, 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 the 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.

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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, the County may cancel or discharge the same and upon the 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

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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 the 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 thereunder 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, and such endorsement shall not limit, vary, change, or affect the protections afforded the County thereunder 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 thereunder with respect to any claim or action against the County by Lessee shall be the same as the protections afforded Lessee thereunder 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 the 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 the 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.

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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 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 agrees not to act unreasonably hereunder in rendering a determination that the policies and/or carriers are unsatisfactory. 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 and Defense

Section 15.01 Lessee shall protect, indemnify and hold harmless the County, its officers, officials, employees, agents, servants, contractors, and representatives, from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, 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 or the Premises under this Agreement, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with the Lessee's use of the Property or the Premises, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

Section 15.02 Lessee hereby represents and warrants that Lessee shall not infringe upon any copyright work or material in accordance with the Federal Copyright Act in connections with Lessee's use of the Property or Premises during the term of this Agreement. Lessee shall protect, indemnify, and hold harmless the County and its officers, officials, employees, contractors, agents, servants, representatives, and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions arising out of or in connection with any claim asserted for infringement of copyright, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright.

Section 15.03 Lessee shall defend the County and its officers, officials, employees, agents, servants, contractors, representatives, and other persons in any suit, including appeals, arising out of, or connection with the Lessee's use of the Property or Premises or any copyright infringement proceeding or action. At the County's option, the County may defend any such proceeding or action and require Lessee to pay reasonable attorney's fees incurred by the County for the defense.

Section 15.04 For any claim for which Lessee shall be required to indemnify or defend the County, its officers, officials, employees, agents, servants, contractors, or representatives, 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 or settlement of the claim on the County's behalf.

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 abandon all or any part of the Improvements, the Improvements may be retained by the County as its property or may be stored or disposed of as the County may see fit. If the Improvements not so removed shall be sold, the County may receive and retain the proceeds of such sale and apply the same, at the County's option, against the reasonable expenses of the sale, moving and storage, payment arrears, and any damages to which the County may be entitled. Any excess proceeds from such sale shall be the property of the County. 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* which are not otherwise recovered by the sale of the property.

Section 16.02 In the event the County requires a decommissioning surety, the County shall give Lessee written notice no earlier than nine (9) year(s) from the Effective Date to require Lessee to provide the County with a bond or one or more letters of credit with the 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, the 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 the County. In the event the County is not in agreement with Lessee's estimate, the 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

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(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, the County may request that Lessee provide the County with information and documentation to confirm the existence and maintenance of such security in favor of the 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 the County the reasonable fees incurred by the 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 the 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 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.* The 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

Section 23.01 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 sublet the Premises or any part thereof, by operation of law or otherwise. Except as otherwise provided in **Section 24** below, Lessee shall not assign the Agreement or any portion thereof without the prior written consent of the County in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. In the event a request to assign is made by Lessee, considerations which may be taken into account by the County include, but are not limited to: (i) the financial capacity of the proposed assignee in relation to the Agreement obligations, with sufficient, reasonably detailed financial information to make a judgment; (ii) the experience of the proposed assignee in the ownership and operation of similar assets as those referenced under this Agreement; and (iii) the general business reputation of the proposed assignee and whether the proposed assignee or any Principal thereof is a Prohibited Person. The proposed assignee shall submit to the County all forms set forth on **Exhibit F** to this Agreement that are required to be submitted pursuant to applicable Legislative Requirements. The County shall grant or deny any request by Lessee to assign this Agreement within twenty (20) days after delivery to the County of Lessee's written request, setting forth the identity of the proposed assignee, its Principals, financials, and such other information described hereunder which will assist the County in making its decision.

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Section 23.02 Any attempt by Lessee to assign this Agreement or a portion thereof without the County's prior written consent 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 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 unconditionally assume all of Lessee's obligations under this Agreement in writing, pursuant to a written assignment and assumption agreement. Each assignment and assumption shall be in writing, and Lessee shall deliver to the County a fully-executed original of such assignment and assumption 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**" under this **Section 24**) 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 thirty (30) Days of the Solar Energy Estate being encumbered, such notice to include the name and address of the Lender and verification of recording data, and the County is given written notice of each amendment or other modification or supplement to the related instruments.

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

- (a) The County will not amend or modify, or take any action causing, consenting to or accepting an 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 without the prior written consent of such Lender.
- (b) Lenders 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. Notwithstanding this right, each Lender shall notify the County in writing as soon as practicable that it will or has performed an act on behalf of the Obligor.
- (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 Obligor 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. If the County shall become entitled to terminate this Agreement due to an uncured Event of Default, as defined in *Section 27.03*, by Obligor, the County will not terminate this Agreement unless it has first provided a Notice to Default to each Registered Lender, giving each Registered Lender at least thirty (30) Days after the expiration of the cure period which this Agreement

provides to Obligor under *Section 27.01* to cure the Event of Default itself. If within such thirty (30) Day period subsequent to the expiration of the cure period a Registered Lender notifies the County in writing 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, as defined in *Section 27.03*, 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 the Registered Lender does not cure the Event of Default, or the Registered Lender does not exercise due diligence to foreclose or acquire Obligor's interest under this Agreement and to perform or cause to be all of the covenants and agreements to be performed and observed by Obligor, the County may terminate this Agreement. 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 under this Agreement and the Improvements.

- (d) Subject to the provisions of paragraph (e) below, the County shall, upon written request of the Registered Lender made within forty (40) Days after notice to such Registered Lender, enter into a new lease agreement with such Registered Lender 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, and shall be 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 under this Agreement, (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) If more than one Registered Lender shall request a new lease agreement pursuant to paragraph (d) above, the County shall enter into such new lease agreement with the Lender whose mortgage is prior in lien. The County, without liability to Obligor or any Lender with an adverse claim, may rely upon a title insurance policy issued by a responsible title insurance company doing business in the county where the Premises are located naming the County and the lessee under such new lease agreement as insureds (and paid for by such lessee), as the basis for determining the appropriate Lender who is entitled to such new lease agreement.
- (f) 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 payments and other charges payable by Lessee continue to be paid in accordance with the terms of this Agreement.
- (g) The time available to a 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 Lender's reasonable control. 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.

- (h) Upon the request of a Registered Lender, the County and Obligor 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 payments hereunder or otherwise in any material respect adversely affect any rights of the County under this Agreement.

Section 25. Condemnation

Notwithstanding Section 24 above, 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 any one or more of the conditions or agreements contained in this Agreement, or as a result of an act or omissions or negligence 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 payments set forth in **Sections 5 and 6**. In no event shall this **Section 26** be construed as a limitation of the County's rights to contribution or indemnification under the New York Civil Procedure Laws and Rules.

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 or the Property.

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Section 27.02 Lessee may choose to terminate this Agreement by providing at least 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 **Sections 5 or 6** 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 Notice of Default 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 the Notice of Default and continues diligently such substantial performance without interruption except for causes beyond its control); or
- (3) Subject to the provisions of *Section 24.02(f)*, 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) Subject to the provisions of *Section 24.02(f)*, 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), and (6) above are collectively referred to herein as a "Non-Monetary Event of Default."

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Section 27.04 Subject to the provisions of **Section 24**, 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 Premises. Such termination to be effective on the date specified in the a notice of termination (“Notice of Termination”), which date shall not be less than thirty (30) Days from the date of the notice (“Termination Date”), in the event Lessee has not cured the default. In such case, Lessee’s rights to the possession of the Premises 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, 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), the County shall not be entitled to terminate this Agreement or evict Lessee from the Premises 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 efforts by the County to cure such 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 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 **Sections 16 and 24**, and subject to the limitations set forth in *Section 27.05* above, following the date specified in the Notice of Termination 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, the County may receive and retain the proceeds of such sale, which shall be the property of the County.

Section 27.08 Subject to the limitations set forth in *Section 27.05* above, 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 the 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 27.09 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

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right or remedy of that Party in respect of such breach or any subsequent breach. The 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 the County to recover any payments then owing by Lessee which are not paid in full.

Section 27.10 Except for the monetary obligations of Lessee, the 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 27.11 In the event the 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 the 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 27.12 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 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 27.13* 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.

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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 the County, to the Department, Attn: Commissioner, at the Department's address first above set forth; or, (c) at such other address as Lessee or the 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 the 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 the County, to the Department at the Department's 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 the 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

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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) to the extent permitted under this Agreement, to 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 Party so requested shall: enter into any reasonable amendment hereto (aa) to correct an error in this Agreement, or (bb) to amend the legal description attached hereto, including replacing said legal description with a revised description prepared or provided by Lessee's or the County'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. Local Preference

Lessee shall use commercially reasonable efforts to use building trades contractors and subcontractors located and doing business within Suffolk County or Nassau County. For purposes of this Agreement, 'located and doing business within Suffolk County or Nassau County' means (i) maintaining a place of business and staffed, operational office at an address within the geographical boundaries of Suffolk County or Nassau County for a period of at least one year, from which employees who perform services of the type Lessee will be contacting for are assigned, and (ii) maintaining during such period an active

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field staff of such employees performing services within Suffolk or Nassau County. In no event shall this clause be deemed to create a third party benefit to any person or entity.

Section 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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.

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Section 44. Conflicts of Interest

Section 44.01 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 44.02 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 45. 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 46. 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)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links."

Section 47. Governing Law

Section 47.01 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 47.02 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 48. 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 49. 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 50. 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 51. 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 52. Entire Agreement

Section 52.01 This Agreement consists of the following: **Sections 1 through 52** 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 52.02 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: [Signature]
Name: SCOTT NELSON
Title: Vice President, Development Operations
Date: 3-11-10

COUNTY OF SUFFOLK

By: [Signature]
Title: Deputy County Executive
Date: 3/22/10

**APPROVED BY:
DEPARTMENT OF ENVIRONMENT AND
ENERGY**

By: [Signature]
Name: Carrie Meek-Gallagher
Title: Commissioner
Date: 3/1/10

**APPROVED BY:
DEPARTMENT OF PUBLIC WORKS**

By: [Signature]
Name: Gilbert Anderson
Title: Commissioner
Date: 3/1/10

**APPROVED AS TO LEGALITY
CHRISTINE MALAFI**

Suffolk County Attorney

By: [Signature]
Basia/Deren Braddish
Asst. County Attorney
Date: 2/26/10

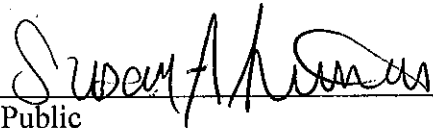
ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the 22nd day of March in the year 2010 before me, the undersigned, personally appeared Christopher E. Kent [name], Chief Deputy County Exec. [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

SUSAN A LIENAU

NOTARY PUBLIC-STATE OF NEW YORK

No. 01116148903

Qualified in Suffolk County

My Commission Expires July 03, 2010

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

Brentwood LIRR Station

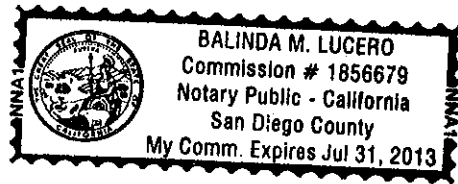
STATE OF CALIFORNIA)
COUNTY OF San Diego) ss.

On March 11, 2010, before me Balinda M. Lucero, a Notary Public, personally appeared Scott Nelson, 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.

Balinda M. Lucero
Notary's Signature



[Notary Seal]

EXHIBIT A
DESCRIPTION OF PROPERTY

Legal Description of Property

That certain real property known as the Brentwood Long Island Rail Road Station Parking Lot located at the intersection Brentwood Road and County Road 100 in the Town of Islip, County of Suffolk, State of New York, more particularly described as:

Tax Map No. **0500-138.00-01.00-003.002**

Parcel Acreage : 4.3

[A more precise legal description will be attached upon receipt of a preliminary title report and/or legal description prepared by surveyor.]

EXHIBIT B
CASH FLOW PAYMENTS

Cash Flow Estimate – Brentwood Long Island Rail Road Station

Estimated Project Size: 1.0MWdc

Estimated Annual Operating Payment: \$ 23,888*

Estimated Quarterly Operating Payment: \$ 5,972*

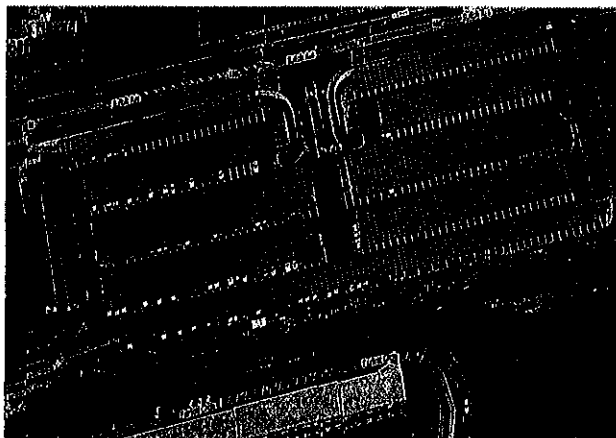
*The parties acknowledge and agree that the above Cash Flow Estimate is based upon an estimate of the size of the Solar Energy System which once completed, may be smaller or larger than the estimated size as set forth in this Exhibit B. Once the size of the Solar Energy System is determined, and prior to the issuance of the building permit, the parties shall execute an amendment to the Agreement to specify the Quarterly Operating Payments payable by Lessee under this Agreement based upon the following formula: $\text{Actual Project Size} \times \$ 25,063 \text{ (Amount per MWdc)} = \text{Annual Operating Payment} / 4 = \text{Quarterly Operating Payment}$

EXHIBIT C APPROVED SITE PLAN

Site S-4 (Brentwood LIRR Station)

Location

The Brentwood project site is located in the hamlet of Brentwood in the Town of Islip at the Brentwood train station, due east of the intersection of Suffolk Ave. and Brentwood Rd. The property is bounded to the south by the LIRR rail bed and train station; to the immediate north by Suffolk Avenue, followed by commercial subdivisions and horse farms; to the west by a commercial subdivision and recreational open space; and to the east by a stormwater recharge basin.



Site Layout

The current site design of 1MW AC is composed of one project area that approximately totals 105,000 square feet of parking area and provide shading to approximately 500 parking spaces. The project area is composed of 11 solar arrays.

Technical Components

The 1MW AC the Brentwood LIRR project site is expected to be the sixth largest project site of the ELI Solar Project sites. Once constructed the project could have up to 4,000 Suntech 270watt solar modules, two 500kW inverters and up-to 420 lineal feet of trenching.

Interconnection

The Brentwood project site will have one Point of Common Coupling to LIPA's existing 13.8 kV distribution system. PCC will be located in the northwest corner of the western parking. From the PCC there a trench approximately 120 feet long in the lawn between the parking area and Suffolk Avenue to tie into LIPA's 13.8kV line.



Figure 2.4-1d
S-4:

Brentwood LIRR Station
Conceptual Layout
Brentwood Rd & Suffolk Ave
Brentwood, New York

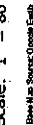
Site Characteristics

- Layout Type: Compact
- AC System Size: 1,600 MW
- DC System Size: 1,050 MW
- Module: Spanish 270
- Module Count: 3,924
- Inverter: 2 - 500 MW
- Transformer: 180

Legend

- Groundwater (Depth 10')
- Groundwater (Depth 20')
- Groundwater (Depth 30')
- Groundwater (Depth 40')
- Groundwater (Depth 50')
- Groundwater (Depth 60')
- Groundwater (Depth 70')
- Groundwater (Depth 80')
- Groundwater (Depth 90')
- Groundwater (Depth 100')
- Groundwater (Depth 110')
- Groundwater (Depth 120')
- Groundwater (Depth 130')
- Groundwater (Depth 140')
- Groundwater (Depth 150')
- Groundwater (Depth 160')
- Groundwater (Depth 170')
- Groundwater (Depth 180')
- Groundwater (Depth 190')
- Groundwater (Depth 200')
- Groundwater (Depth 210')
- Groundwater (Depth 220')
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- Groundwater (Depth 240')
- Groundwater (Depth 250')
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- Groundwater (Depth 280')
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- Groundwater (Depth 340')
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- Groundwater (Depth 380')
- Groundwater (Depth 390')
- Groundwater (Depth 400')
- Groundwater (Depth 410')
- Groundwater (Depth 420')
- Groundwater (Depth 430')
- Groundwater (Depth 440')
- Groundwater (Depth 450')
- Groundwater (Depth 460')
- Groundwater (Depth 470')
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- Groundwater (Depth 510')
- Groundwater (Depth 520')
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- Groundwater (Depth 570')
- Groundwater (Depth 580')
- Groundwater (Depth 590')
- Groundwater (Depth 600')
- Groundwater (Depth 610')
- Groundwater (Depth 620')
- Groundwater (Depth 630')
- Groundwater (Depth 640')
- Groundwater (Depth 650')
- Groundwater (Depth 660')
- Groundwater (Depth 670')
- Groundwater (Depth 680')
- Groundwater (Depth 690')
- Groundwater (Depth 700')
- Groundwater (Depth 710')
- Groundwater (Depth 720')
- Groundwater (Depth 730')
- Groundwater (Depth 740')
- Groundwater (Depth 750')
- Groundwater (Depth 760')
- Groundwater (Depth 770')
- Groundwater (Depth 780')
- Groundwater (Depth 790')
- Groundwater (Depth 800')
- Groundwater (Depth 810')
- Groundwater (Depth 820')
- Groundwater (Depth 830')
- Groundwater (Depth 840')
- Groundwater (Depth 850')
- Groundwater (Depth 860')
- Groundwater (Depth 870')
- Groundwater (Depth 880')
- Groundwater (Depth 890')
- Groundwater (Depth 900')
- Groundwater (Depth 910')
- Groundwater (Depth 920')
- Groundwater (Depth 930')
- Groundwater (Depth 940')
- Groundwater (Depth 950')
- Groundwater (Depth 960')
- Groundwater (Depth 970')
- Groundwater (Depth 980')
- Groundwater (Depth 990')
- Groundwater (Depth 1000')

Scale: 1" = 80'



Drawn by: [Name]
Checked by: [Name]
Approved by: [Name]



EXHIBIT D
FORM OF LETTER OF CREDIT/BOND

Date: _____
Bank Ref.: _____
Amount: US\$ _____
Expiry Date: _____

[Beneficiary Name]
[Beneficiary Address]
[City, State ZIP]

Re: [Project and Agreement]

By the order of our client, enXco Development Corporation (“**Applicant**”), 700 La Terraza Boulevard, #200, Escondido, CA 92025, and for the account of EDF Energies Nouvelles (“**Account Party**”), we, [NAME OF ISSUING BANK] (“**Issuer**”), hereby issue our Irrevocable Letter of Credit No. _____ in favor of [Beneficiary Name] (“**Beneficiary**”), [Beneficiary Address] [City, State ZIP], for an amount not to exceed USD _____ Dollars (\$_____), pursuant to that certain [Name of Agreement giving rise to LOC obligation]|| _____ (“**Agreement**”), between Applicant and Beneficiary. This Letter of Credit shall become effective on [date] and shall expire no later than [Expiration Date].

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. ____ accompanied by your statement signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [specify place of presentation of documents]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds. Partial draws are permitted under this Letter of Credit.

This Irrevocable Letter of Credit is transferable by Beneficiary in its entirety, but not in part, against the presentation of transfer instructions in the form attached hereto as Exhibit B. Issuer shall effect such a transfer only upon receipt of the original Letter of Credit and any amendment(s) thereto. Upon such presentation, Issuer shall forthwith transfer this Letter of Credit to the transferee by issuing an irrevocable Letter of Credit to such transferee with provisions substantially identical to those contained in this Letter of Credit No. _____, including the provisions for transfer set forth in this paragraph.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credit (2007 Revision) International Chamber of Commerce Publication No. 600 (the “**UCP**”),

except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*specify address*], referring specifically to Issuer's Letter of Credit No. _____. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*specify telephone number*] and have this Letter of Credit available.

[SIGNATURE PAGE FOLLOWS]

[Name of Issuer]

By: _____

Name:

Title:

EXHIBIT E
INTENTIONALLY OMITTED

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.

Brentwood LIRR Station

- 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

Brentwood LIRR Station

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)<<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.

Brentwood LIRR Station

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:

Brentwood LIRR Station

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

LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

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

Premises: Part of the Property known as Cohalan Court Complex

Central Islip, New York

Date: February 26, 2010

TABLE OF CONTENTS

	<u>Page</u>
Section 1: Definitions	1
Section 2: Purpose	5
Section 3: Description	6
Section 4: Term	7
Section 5: Payments to County	7
Section 6: Late Charges	8
Section 7: Lessee's Duties and Obligations	8
Section 8: Prevailing Wage	11
Section 9: Other Construction By Lessee	12
Section 10: Requirements of Governmental Agencies	12
Section 11: Liens	13
Section 12: Waiver of Nuisance	13
Section 13: Temporary Storage	13
Section 14: Insurance	14
Section 15: Indemnity and Defense	16
Section 16: Removal and Restoration	17
Section 17: Ownership Attributes	18
Section 18: Hazardous Substances and Waste	18
Section 19: Signs	19
Section 20: Quiet Enjoyment	19
Section 21: Representations, Warranties and Covenants	19
Section 22: Confidentiality	20
Section 23: Successors and Assigns	20
Section 24: Leasehold Financing	21
Section 25: Condemnation	23
Section 26: Additional Fees and Charges	23
Section 27: Termination/Default Remedies and Damages	23
Section 28: Force Majeure	26
Section 29: Notices	27
Section 30: Broker	27
Section 31: Paragraph Headings	27

Section 32: Legislative Approval	27
Section 33: Waiver of Jury Trial	27
Section 34: Off-set of Arrears or Default	28
Section 35: Cooperation on Claims	28
Section 36: Intentionally Omitted	28
Section 37: Local Preference	28
Section 38: Not a Co-Partnership or Joint Venture	29
Section 39: Independent Contractor	29
Section 40: County Representatives	29
Section 41: No Credit	29
Section 42: No Implied Waiver	29
Section 43: Certification	29
Section 44: Conflicts of Interest	30
Section 45: Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction	30
Section 46: Suffolk County Legislative Requirements	30
Section 47: Governing Law	30
Section 48: Severability	30
Section 49: Interpretations	31
Section 50: Memorandum	31
Section 51: Execution in Counterparts	31
Section 52: Entire Agreement	31
Signature Page	32

EXHIBITS

Exhibit A – Descriptions of Property
Exhibit B – Cash Flow Payments
Exhibit C – Approved Site Plan
Exhibit D – Form of Surety Bond
Exhibit E – Liens and Encumbrances
Exhibit F - Legislative Requirements
Exhibit G – Form of Memorandum of Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), made as of March 22, 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 last date of execution of this Agreement.

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

"Control" and the terms "controlled by" and "under common control with" mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity or ownership interest of such Person.

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: means 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: means 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",

Cohalan Court Complex

“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: means 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 first 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.

Person: means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, general partnership, limited liability company or government or any agency or political subdivision thereof or other entity;

PILOTs: means payments in lieu of taxes.

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

Pre-Operating Annual Payments: means \$ 9,203.14 per annum.

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

Cohalan Court Complex

Principal: when used with respect to any Person, means the chief executive officer, the chief financial officer, the chief operating officer or the chairperson of such Person or a Person that directly or indirectly through one of more intermediaries controls such Person.

Prohibited Person: means (i) any Person (A) that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County unless such default or breach has been waived in writing by the County, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County, unless such default or breach has been waived in writing by the County, or (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Property: means the County property a portion of which is the subject of this Agreement, described in *Section 3.01*.

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. 28-2010 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. 28-2010 of the Suffolk County Legislature, dated the 4th day of February, 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 Premises 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 the 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 the 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 Premises 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 Numbers 0500—229.10-01.00-003 and 0500-229-10-01.00-005, located at 400 Carleton Avenue, Central Islip and further identified as Cohalan Court Complex, Central Islip, NY (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 any buildings, structures, improvements, additions, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or there under pursuant to the terms 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 Premises 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 the County shall not be liable for any latent or patent defect thereon. Lessee may use the Premises 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 Premises 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 the 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 until the Operations Date.

Section 5.02 Commencing with the Operations Date, Lessee shall make quarterly payments to the 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, no later than 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

Cohalan Court Complex

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 by the Parties in writing, which amount shall in no event exceed actual expenses incurred by the County for the installation/relocation of security cameras.

Section 5.05 Nothing contained in this **Section 5** shall affect the survival of the obligations of Lessee as set forth in this Agreement.

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 the County at the County's address set forth herein or at such other place as the 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% per month 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.

Cohalan Court Complex

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 under this Agreement, the County shall have no liabilities or obligations of any kind to any contractors or subcontractors engaged by Lessee or for any other matter in connection with the construction of the Improvements. Lessee shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fine, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence, or any acts or omissions of Lessee's contractors or subcontractors, including reimbursement of the cost of reasonable attorneys' fees and other professional fees, incurred by the County, its officers, agents, servants, representatives, and employees in any action or proceeding arising or alleged to arise out of, or in connection with construction associated with the Improvements, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

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. The construction schedule shall provide for the completion of all Improvements within twelve (12) months of the receipt of building permits.

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 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 the 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. The County shall not levy any personal property taxes, special assessments or real property taxes on the Solar Energy System during the Term.

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 The County understands that the point of connection to LIPA's utility system shall be

Cohalan Court Complex

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 or County's employees, agents or representatives, 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 l written report to the Department, setting forth the findings of such survey and delineating any remedial actions to be taken within forty-five (45) Days of its receipt of such survey.

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. Lessee shall have no obligation for the routine maintenance of the lighting or the electrical charges attributable to the operation of the lighting.

Section 7.18 Lessee understands that the Property may be located in high wind region of New York State. All designs shall be prepared with a reasonable degree of certainty to 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

Regardless of whether the construction of the Improvements is deemed a public works project for purposes of determining applicability of Section 220 of the Labor Law, 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 the 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, the County may cancel or discharge the same and upon the 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 the 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 thereunder 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, and such endorsement shall not limit, vary, change, or affect the protections afforded the County thereunder 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 thereunder with respect to any claim or action against the County by Lessee shall be the same as the protections afforded Lessee thereunder 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 the 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 the 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 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 agrees not to act unreasonably hereunder in rendering a determination that the policies and/or carriers are unsatisfactory. 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 and Defense

Section 15.01 Lessee shall protect, indemnify and hold harmless the County, its officers, officials, employees, agents, servants, contractors, and representatives, from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, 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 or the Premises under this Agreement, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with the Lessee's use of the Property or the Premises, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

Section 15.02 Lessee hereby represents and warrants that Lessee shall not infringe upon any copyright work or material in accordance with the Federal Copyright Act in connections with Lessee's use of the Property or Premises during the term of this Agreement. Lessee shall protect, indemnify, and hold harmless the County and its officers, officials, employees, contractors, agents, servants, representatives, and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions arising out of or in connection with any claim asserted for infringement of copyright, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright.

Section 15.03 Lessee shall defend the County and its officers, officials, employees, agents, servants, contractors, representatives, and other persons in any suit, including appeals, arising out of, or connection with the Lessee's use of the Property or Premises or any copyright infringement proceeding or action. At the County's option, the County may defend any such proceeding or action and require Lessee to pay reasonable attorney's fees incurred by the County for the defense.

Section 15.04 For any claim for which Lessee shall be required to indemnify or defend the County, its officers, officials, employees, agents, servants, contractors, or representatives, 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 or settlement of the claim on the County's behalf.

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 abandon all or any part of the Improvements, the Improvements may be retained by the County as its property or may be stored or disposed of as the County may see fit. If the Improvements not so removed shall be sold, the County may receive and retain the proceeds of such sale and apply the same, at the County's option, against the reasonable expenses of the sale, moving and storage, payment arrears, and any damages to which the County may be entitled. Any excess proceeds from such sale shall be the property of the County. 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* which are not otherwise recovered by the sale of the property.

Section 16.02 In the event the County requires a decommissioning surety, the County shall give Lessee written notice no earlier than nine (9) year(s) from the Effective Date to require Lessee to provide the County with a bond or one or more letters of credit with the 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, the 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 the County. In the event the County is not in agreement with Lessee's estimate, the 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, the County may request that Lessee provide the County with information and documentation to confirm the existence and maintenance of such security in favor of the 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 the County the reasonable fees incurred by the 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 the 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 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.* The 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

Section 23.01 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 sublet the Premises or any part thereof, by operation of law or otherwise. Except as otherwise provided in **Section 24** below, Lessee shall not assign the Agreement or any portion thereof without the prior written consent of the County in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. In the event a request to assign is made by Lessee, considerations which may be taken into account by the County include, but are not limited to: (i) the financial capacity of the proposed assignee in relation to the Agreement obligations, with sufficient, reasonably detailed financial information to make a judgment; (ii) the experience of the proposed assignee in the ownership and operation of similar assets as those referenced under this Agreement; and (iii) the general business reputation of the proposed assignee and whether the proposed assignee or any Principal thereof is a Prohibited Person. The proposed assignee shall submit to the County all forms set forth on **Exhibit F** to this Agreement that are required to be submitted pursuant to applicable Legislative Requirements. The County shall grant or deny any request by Lessee to assign this Agreement within twenty (20) days after delivery to the County of Lessee's written request, setting forth the identity of the proposed assignee, its Principals, financials, and such other information described hereunder which will assist the County in making its decision.

Section 23.02 Any attempt by Lessee to assign this Agreement or a portion thereof without the County's prior written consent 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 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 unconditionally assume all of Lessee's obligations under this Agreement in writing, pursuant to a written assignment and assumption agreement. Each assignment and assumption shall be in writing, and Lessee shall deliver to the County a fully-executed original of such assignment and assumption 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**" under this **Section 24**) 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 thirty (30) Days of the Solar Energy Estate being encumbered, such notice to include the name and address of the Lender and verification of recording data, and the County is given written notice of each amendment or other modification or supplement to the related instruments.

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

- (a) The County will not amend or modify, or take any action causing, consenting to or accepting an 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 without the prior written consent of such Lender.
- (b) Lenders 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. Notwithstanding this right, each Lender shall notify the County in writing as soon as practicable that it will or has performed an act on behalf of the Obligor.
- (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 Obligor 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. If the County shall become entitled to terminate this Agreement due to an uncured Event of Default, as defined in *Section 27.03*, by Obligor, the County will not terminate this Agreement unless it has first provided a Notice to Default to each Registered Lender, giving each Registered Lender at least thirty (30) Days after the expiration of the cure period which this Agreement provides to Obligor under *Section 27.01* to cure the Event of Default itself. If within such thirty (30) Day period subsequent to the expiration of the cure period a Registered Lender notifies the County in writing 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, as defined in *Section 27.03*, 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 the Registered Lender does not cure the Event of Default, or the Registered Lender does not exercise due diligence to foreclose or acquire Obligor's interest under this Agreement and to perform or cause to be all of the covenants and agreements to be performed and observed by Obligor, the County may terminate this Agreement. 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 under this Agreement and the Improvements.

- (d) Subject to the provisions of paragraph (e) below, the County shall, upon written request of the Registered Lender made within forty (40) Days after notice to such Registered Lender, enter into a new lease agreement with such Registered Lender 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, and shall be 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 under this Agreement, (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) If more than one Registered Lender shall request a new lease agreement pursuant to paragraph (d) above, the County shall enter into such new lease agreement with the Lender whose mortgage is prior in lien. The County, without liability to Obligor or any Lender with an adverse claim, may rely upon a title insurance policy issued by a responsible title insurance company doing business in the county where the Premises are located naming the County and the lessee under such new lease agreement as insureds (and paid for by such lessee), as the basis for determining the appropriate Lender who is entitled to such new lease agreement.
- (f) 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 payments and other charges payable by Lessee continue to be paid in accordance with the terms of this Agreement.
- (g) The time available to a 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 Lender's reasonable control. 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.

(h) Upon the request of a Registered Lender, the County and Obligor 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 payments hereunder or otherwise in any material respect adversely affect any rights of the County under this Agreement.

Section 25. Condemnation

Notwithstanding Section 24 above, 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 any one or more of the conditions or agreements contained in this Agreement, or as a result of an act or omissions or negligence 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 payments set forth in Sections 5 and 6. In no event shall this Section 26 be construed as a limitation of the County's rights to contribution or indemnification under the New York Civil Procedure Laws and Rules.

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 or the Property.

Section 27.02 Lessee may choose to terminate this Agreement by providing at least 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 **Sections 5 or 6** 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 Notice of Default 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 the Notice of Default and continues diligently such substantial performance without interruption except for causes beyond its control); or
- (3) Subject to the provisions of *Section 24.02(f)*, 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) Subject to the provisions of *Section 24.02(f)*, 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), and (6) above are collectively referred to herein as a "Non-Monetary Event of Default."

Section 27.04 Subject to the provisions of **Section 24**, 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 Premises. Such termination to be effective on the date specified in the a notice of termination ("Notice of Termination"), which date shall not be less than thirty (30) Days from the date of the notice ("Termination Date"), in the event Lessee has not cured the default. In such case, Lessee's rights to the possession of the Premises 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, 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), the County shall not be entitled to terminate this Agreement or evict Lessee from the Premises 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 efforts by the County to cure such 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 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 **Sections 16** and **24**, and subject to the limitations set forth in *Section 27.05* above, following the date specified in the Notice of Termination 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, the County may receive and retain the proceeds of such sale, which shall be the property of the County.

Section 27.08 Subject to the limitations set forth in *Section 27.05* above, 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 the 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 27.09 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. The 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 the County to recover any payments then owing by Lessee which are not paid in full.

Section 27.10 Except for the monetary obligations of Lessee, the 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 27.11 In the event the 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 the 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 27.12 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 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 27.13* 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 the County, to the Department, Attn: Commissioner, at the Department's address first above set forth; or, (c) at such other address as Lessee or the 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 the 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 the County, to the Department at the Department's 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 the 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) to the extent permitted under this Agreement, to 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 Party so requested shall: enter into any reasonable amendment hereto (aa) to correct an error in this Agreement, or (bb) to amend the legal description attached hereto, including replacing said legal description with a revised description prepared or provided by Lessee's or the County'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. Local Preference

Lessee shall use commercially reasonable efforts to use building trades contractors and subcontractors located and doing business within Suffolk County or Nassau County. For purposes of this Agreement, 'located and doing business within Suffolk County or Nassau County' means (i) maintaining a place of business and staffed, operational office at an address within the geographical boundaries of Suffolk County or Nassau County for a period of at least one year, from which employees who perform services of the type Lessee will be contacting for are assigned, and (ii) maintaining during such period an active

field staff of such employees performing services within Suffolk or Nassau County. In no event shall this clause be deemed to create a third party benefit to any person or entity.

Section 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. Conflicts of Interest

Section 44.01 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 44.02 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 45. 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 46. 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)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links."

Section 47. Governing Law

Section 47.01 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 47.02 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 48. 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 49. 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 50. 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 51. 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 52. Entire Agreement

Section 52.01 This Agreement consists of the following: **Sections 1** through **52** 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 52.02 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: [Signature]
Name: SCOTT NELSON
Title: Vice President, Development Operations
Date: 3-11-10

COUNTY OF SUFFOLK

By: [Signature]
Title: Deputy County Executive
Date: 3/22/10

**APPROVED BY:
DEPARTMENT OF ENVIRONMENT AND
ENERGY**

By: [Signature]
Name: Carrie Meek-Gallagher
Title: Commissioner
Date: 3/1/10

**APPROVED BY:
DEPARTMENT OF PUBLIC WORKS**

By: [Signature]
Name: Gilbert Anderson
Title: Commissioner
Date: 3/1/10

**APPROVED AS TO LEGALITY
CHRISTINE MALAFI**

Suffolk County Attorney

By: [Signature]
Basia Doren Braddish
Asst. County Attorney
Date: 2/26/10

ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the 22nd day of March in the year 2010 before me, the undersigned, personally appeared Christopher E. Kert [name], Chief Deputy County Exec. [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.

Susan A. Lienau
Notary Public

SUSAN A LIENAU
NOTARY PUBLIC-STATE OF NEW YORK
No. 01116148903
Qualified in Suffolk County
My Commission Expires July 03, 2010

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

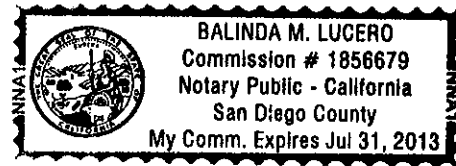
COUNTY OF San Diego } ss.

On March 11, 2010, before me, Balinda M. Lucero, a Notary Public, personally appeared Scott Nelson, 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.

Balinda M. Lucero
Notary's Signature



[Notary Seal]

EXHIBIT A
DESCRIPTION OF PROPERTY

That certain real property located at 400 Carleton Avenue located in the Town of Islip, County of Suffolk, State of New York, more particularly described as:

Parcel 1 – Tax Map No. 0500-229.10-01.00-003.000

Parcel 2 – Tax Map No. 0500-229-10-01.00-005.000

Parcel Acreage : 43.3

[A more precise legal description will be attached upon receipt of a preliminary title report and/or legal description prepared by surveyor.]

EXHIBIT B
CASH FLOW PAYMENTS

Cash Flow Estimate – Cohalan Court Complex

Estimated Project Size: 3.7MWdc

Estimated Annual Operating Payment: \$ 92,031*

Estimated Quarterly Operating Payment: \$23,008*

*The parties acknowledge and agree that the above 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 this 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 the Agreement to specify the Quarterly Operating Payments payable by Lessee under this Agreement based upon the following formula: Actual Project Size x \$ 25,063 (Amount per MWdc) = Annual Operating Payment/4 = Quarterly Operating Payment

EXHIBIT C
APPROVED SITE PLAN

Site S-3 (Cohalan Court Complex)

Location

The Cohalan Court Complex solar project site is in the hamlet of Central Islip and Town of Islip at 400 Carleton Ave, Central Islip, NY. On the expansive court complex is the Alphonse M. D'Amato Federal Courthouse which enXco will not be developing. The County-owned property is bounded to the north by Citibank Park and other parcels currently under development; to the south by the Southern State Parkway; to the southeast by Alphonse M. D'Amato Federal Courthouse; to the west by CR-17 (Carleton Avenue); followed by mixed commercial, industrial and recreational uses.

Site Layout

The current site design of 3.5MWAC is composed of two parking lot project areas that approximately total 368,000 square feet of parking area and provide shading to roughly 2,082 parking spaces. The first project area is located in the county's North West parking lot and is composed of 13 solar arrays totaling approximately 1.25MW AC. The second project area is in the large North East Parking lot and is composed of 14 solar arrays that total over roughly 2.25MW AC of solar capacity.

Technical Components

The 3.5MW AC the Cohalan Court Complex project site is expected to be the second largest project site of the seven ELI Solar Project sites. Once constructed the project could have up to 15,100 Suntech 270watt solar modules, seven 500kW inverters and up-to 1,630 lineal feet of electrical trenching.

Interconnection

The Cohalan project site will require two points of interconnection to LIPA's 13.8kV distribution system. PCC#1 will be located on the southeastcorner of the northwest parking lot. From PCC#1 an electrical line will run 124 feet due east and then run 550 feet directly north to tap into LIPA's distribution network at 13.8kV. PCC #2 will be located in the grassy area immediately west of the southeastern parking. From PPC#2 an underground cable run 600 feet north and tie into LIPA's 13.8kV distribution line.

EXHIBIT D
FORM OF LETTER OF CREDIT/BOND

Date: _____
Bank Ref.: _____
Amount: US\$ _____
Expiry Date: _____

[Beneficiary _____ Name]
[Beneficiary _____ Address]
[City, State ZIP]

Re: [Project and Agreement]

By the order of our client, enXco Development Corporation (“**Applicant**”), 700 La Terraza Boulevard, #200, Escondido, CA 92025, and for the account of EDF Energies Nouvelles (“**Account Party**”), we, [NAME OF ISSUING BANK] (“**Issuer**”), hereby issue our Irrevocable Letter of Credit No. _____ in favor of [Beneficiary Name] (“**Beneficiary**”), [Beneficiary Address] [City, State ZIP], for an amount not to exceed USD _____ Dollars (\$_____), pursuant to that certain [Name of Agreement giving rise to LOC obligation]|| _____ (“**Agreement**”), between Applicant and Beneficiary. This Letter of Credit shall become effective on [date] and shall expire no later than [Expiration Date].

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. ____ accompanied by your statement signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [specify place of presentation of documents]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds. Partial draws are permitted under this Letter of Credit.

This Irrevocable Letter of Credit is transferable by Beneficiary in its entirety, but not in part, against the presentation of transfer instructions in the form attached hereto as Exhibit B. Issuer shall effect such a transfer only upon receipt of the original Letter of Credit and any amendment(s) thereto. Upon such presentation, Issuer shall forthwith transfer this Letter of Credit to the transferee by issuing an irrevocable Letter of Credit to such transferee with provisions substantially identical to those contained in this Letter of Credit No. _____, including the provisions for transfer set forth in this paragraph.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credit (2007 Revision) International Chamber of Commerce Publication No. 600 (the “**UCP**”),

except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*specify address*], referring specifically to Issuer's Letter of Credit No. _____. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*specify telephone number*] and have this Letter of Credit available.

[SIGNATURE PAGE FOLLOWS]

[Name of Issuer]

By: _____

Name:

Title:

EXHIBIT E
INTENTIONALLY OMITTED

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)<<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

LA0015

LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

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

Premises: Part of the Property known as Deer Park LIRR Station

Deer Park, New York

Date: February 26, 2010

TABLE OF CONTENTS

	<u>Page</u>
Section 1: Definitions	1
Section 2: Purpose	5
Section 3: Description	6
Section 4: Term	7
Section 5: Payments to County	7
Section 6: Late Charges	8
Section 7: Lessee's Duties and Obligations	8
Section 8: Prevailing Wage	11
Section 9: Other Construction By Lessee	12
Section 10: Requirements of Governmental Agencies	12
Section 11: Liens	13
Section 12: Waiver of Nuisance	13
Section 13: Temporary Storage	13
Section 14: Insurance	14
Section 15: Indemnity and Defense	16
Section 16: Removal and Restoration	17
Section 17: Ownership Attributes	18
Section 18: Hazardous Substances and Waste	18
Section 19: Signs	19
Section 20: Quiet Enjoyment	19
Section 21: Representations, Warranties and Covenants	19
Section 22: Confidentiality	20
Section 23: Successors and Assigns	20
Section 24: Leasehold Financing	21
Section 25: Condemnation	23
Section 26: Additional Fees and Charges	23
Section 27: Termination/Default Remedies and Damages	23
Section 28: Force Majeure	26
Section 29: Notices	27
Section 30: Broker	27
Section 31: Paragraph Headings	27

Section 32: Legislative Approval	27
Section 33: Waiver of Jury Trial	27
Section 34: Off-set of Arrears or Default	28
Section 35: Cooperation on Claims	28
Section 36: Intentionally Omitted	28
Section 37: Local Preference	28
Section 38: Not a Co-Partnership or Joint Venture	29
Section 39: Independent Contractor	29
Section 40: County Representatives	29
Section 41: No Credit	29
Section 42: No Implied Waiver	29
Section 43: Certification	29
Section 44: Conflicts of Interest	30
Section 45: Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction	30
Section 46: Suffolk County Legislative Requirements	30
Section 47: Governing Law	30
Section 48: Severability	30
Section 49: Interpretations	31
Section 50: Memorandum	31
Section 51: Execution in Counterparts	31
Section 52: Entire Agreement	31
Signature Page	32

EXHIBITS

- Exhibit A – Descriptions of Property
- Exhibit B – Cash Flow Payments
- Exhibit C – Approved Site Plan
- Exhibit D – Form of Surety Bond
- Exhibit E – Liens and Encumbrances
- Exhibit F – Legislative Requirements
- Exhibit G – Form of Memorandum of Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), made as of March 22 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 last date of execution of this Agreement.

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

"Control" and the terms "controlled by" and "under common control with" mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity or ownership interest of such Person.

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: means 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: means 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",

Deer Park LIRR Station

“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: means 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 first 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.

Person: means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, general partnership, limited liability company or government or any agency or political subdivision thereof or other entity;

PILOTs: means payments in lieu of taxes.

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

Pre-Operating Annual Payments: means \$ 6,088.06 per annum.

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

Deer Park LIRR Station

Principal: when used with respect to any Person, means the chief executive officer, the chief financial officer, the chief operating officer or the chairperson of such Person or a Person that directly or indirectly through one of more intermediaries controls such Person.

Prohibited Person: means (i) any Person (A) that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County unless such default or breach has been waived in writing by the County, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County, unless such default or breach has been waived in writing by the County, or (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Property: means the County property a portion of which is the subject of this Agreement, described in *Section 3.01*.

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. 28-2010 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. 28-2010 of the Suffolk County Legislature, dated the 4th day of February, 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 Premises 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 the 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 the 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 Premises 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 Numbers 500-179-02-097.001 and 500-0179-02-098.002, located at the intersection of Grant Avenue and Long Island Avenue in the Town of Islip, and further identified as Deer Park LIRR Station, Deer Park, New York (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 any buildings, structures, improvements, additions, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or there under pursuant to the terms 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 Premises 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 the County shall not be liable for any latent or patent defect thereon. Lessee may use the Premises 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 Premises 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 the 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 until the Operations Date.

Section 5.02 Commencing with the Operations Date, Lessee shall make quarterly payments to the 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, no later than 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

Deer Park LIRR Station

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 [Intentionally Omitted]

Section 5.05 Nothing contained in this **Section 5** shall affect the survival of the obligations of Lessee as set forth in this Agreement.

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 the County at the County's address set forth herein or at such other place as the 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% per month 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

Deer Park LIRR Station

any loss or damages resulting from the use thereof. Notwithstanding any rights the County may have reserved to itself under this Agreement, the County shall have no liabilities or obligations of any kind to any contractors or subcontractors engaged by Lessee or for any other matter in connection with the construction of the Improvements. Lessee shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fine, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence, or any acts or omissions of Lessee's contractors or subcontractors, including reimbursement of the cost of reasonable attorneys' fees and other professional fees, incurred by the County, its officers, agents servants, representatives, and employees in any action or proceeding arising or alleged to arise out of, or in connection with construction associated with the Improvements, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

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. The construction schedule shall provide for the completion of all Improvements within twelve (12) months of the receipt of building permits.

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 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 the 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. The County shall not levy any personal property taxes, special assessments or real property taxes on the Solar Energy System during the Term.

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 The 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.

Deer Park LIRR Station

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 or County's employees, agents or representatives, 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 l written report to the Department, setting forth the findings of such survey and delineating any remedial actions to be taken within forty-five (45) Days of its receipt of such survey.

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. Lessee shall have no obligation for the routine maintenance of the lighting or the electrical charges attributable to the operation of the lighting.

Section 7.18 Lessee understands that the Property may be located in high wind region of New York State. All designs shall be prepared with a reasonable degree of certainty to 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

Regardless of whether the construction of the Improvements is deemed a public works project for purposes of determining applicability of Section 220 of the Labor Law, 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 the 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.

Deer Park LIRR Station

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, the County may cancel or discharge the same and upon the 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

Deer Park LIRR Station

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 the 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 thereunder 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, and such endorsement shall not limit, vary, change, or affect the protections afforded the County thereunder 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 thereunder with respect to any claim or action against the County by Lessee shall be the same as the protections afforded Lessee thereunder 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 the 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 the 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 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 agrees not to act unreasonably hereunder in rendering a determination that the policies and/or carriers are unsatisfactory. 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 and Defense

Section 15.01 Lessee shall protect, indemnify and hold harmless the County, its officers, officials, employees, agents, servants, contractors, and representatives, from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, 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 or the Premises under this Agreement, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with the Lessee's use of the Property or the Premises, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

Section 15.02 Lessee hereby represents and warrants that Lessee shall not infringe upon any copyright work or material in accordance with the Federal Copyright Act in connections with Lessee's use of the Property or Premises during the term of this Agreement. Lessee shall protect, indemnify, and hold harmless the County and its officers, officials, employees, contractors, agents, servants, representatives, and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions arising out of or in connection with any claim asserted for infringement of copyright, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright.

Section 15.03 Lessee shall defend the County and its officers, officials, employees, agents, servants, contractors, representatives, and other persons in any suit, including appeals, arising out of, or connection with the Lessee's use of the Property or Premises or any copyright infringement proceeding or action. At the County's option, the County may defend any such proceeding or action and require Lessee to pay reasonable attorney's fees incurred by the County for the defense.

Section 15.04 For any claim for which Lessee shall be required to indemnify or defend the County, its officers, officials, employees, agents, servants, contractors, or representatives, 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 or settlement of the claim on the County's behalf.

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 abandon all or any part of the Improvements, the Improvements may be retained by the County as its property or may be stored or disposed of as the County may see fit. If the Improvements not so removed shall be sold, the County may receive and retain the proceeds of such sale and apply the same, at the County's option, against the reasonable expenses of the sale, moving and storage, payment arrears, and any damages to which the County may be entitled. Any excess proceeds from such sale shall be the property of the County. 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* which are not otherwise recovered by the sale of the property.

Section 16.02 In the event the County requires a decommissioning surety, the County shall give Lessee written notice no earlier than nine (9) year(s) from the Effective Date to require Lessee to provide the County with a bond or one or more letters of credit with the 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, the 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 the County. In the event the County is not in agreement with Lessee's estimate, the 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, the County may request that Lessee provide the County with information and documentation to confirm the existence and maintenance of such security in favor of the 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 the County the reasonable fees incurred by the 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 the 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 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.* The 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

Section 23.01 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 sublet the Premises or any part thereof, by operation of law or otherwise. Except as otherwise provided in **Section 24** below, Lessee shall not assign the Agreement or any portion thereof without the prior written consent of the County in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. In the event a request to assign is made by Lessee, considerations which may be taken into account by the County include, but are not limited to: (i) the financial capacity of the proposed assignee in relation to the Agreement obligations, with sufficient, reasonably detailed financial information to make a judgment; (ii) the experience of the proposed assignee in the ownership and operation of similar assets as those referenced under this Agreement; and (iii) the general business reputation of the proposed assignee and whether the proposed assignee or any Principal thereof is a Prohibited Person. The proposed assignee shall submit to the County all forms set forth on **Exhibit F** to this Agreement that are required to be submitted pursuant to applicable Legislative Requirements. The County shall grant or deny any request by Lessee to assign this Agreement within twenty (20) days after delivery to the County of Lessee's written request, setting forth the identity of the proposed assignee, its Principals, financials, and such other information described hereunder which will assist the County in making its decision.

Section 23.02 Any attempt by Lessee to assign this Agreement or a portion thereof without the County's prior written consent 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 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 unconditionally assume all of Lessee's obligations under this Agreement in writing, pursuant to a written assignment and assumption agreement. Each assignment and assumption shall be in writing, and Lessee shall deliver to the County a fully-executed original of such assignment and assumption 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**" under this **Section 24**) 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 thirty (30) Days of the Solar Energy Estate being encumbered, such notice to include the name and address of the Lender and verification of recording data, and the County is given written notice of each amendment or other modification or supplement to the related instruments.

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

- (a) The County will not amend or modify, or take any action causing, consenting to or accepting an 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 without the prior written consent of such Lender.
- (b) Lenders 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. Notwithstanding this right, each Lender shall notify the County in writing as soon as practicable that it will or has performed an act on behalf of the Obligor.
- (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 Obligor 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. If the County shall become entitled to terminate this Agreement due to an uncured Event of Default, as defined in *Section 27.03*, by Obligor, the County will not terminate this Agreement unless it has first provided a Notice to Default to each Registered Lender, giving each Registered Lender at least thirty (30) Days after the expiration of the cure period which this Agreement

provides to Obligor under *Section 27.01* to cure the Event of Default itself. If within such thirty (30) Day period subsequent to the expiration of the cure period a Registered Lender notifies the County in writing 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, as defined in *Section 27.03*, 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 the Registered Lender does not cure the Event of Default, or the Registered Lender does not exercise due diligence to foreclose or acquire Obligor's interest under this Agreement and to perform or cause to be all of the covenants and agreements to be performed and observed by Obligor, the County may terminate this Agreement. 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 under this Agreement and the Improvements.

- (d) Subject to the provisions of paragraph (e) below, the County shall, upon written request of the Registered Lender made within forty (40) Days after notice to such Registered Lender, enter into a new lease agreement with such Registered Lender 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, and shall be 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 under this Agreement, (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) If more than one Registered Lender shall request a new lease agreement pursuant to paragraph (d) above, the County shall enter into such new lease agreement with the Lender whose mortgage is prior in lien. The County, without liability to Obligor or any Lender with an adverse claim, may rely upon a title insurance policy issued by a responsible title insurance company doing business in the county where the Premises are located naming the County and the lessee under such new lease agreement as insureds (and paid for by such lessee), as the basis for determining the appropriate Lender who is entitled to such new lease agreement.
- (f) 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 payments and other charges payable by Lessee continue to be paid in accordance with the terms of this Agreement.
- (g) The time available to a 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 Lender's reasonable control. 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.

- (h) Upon the request of a Registered Lender, the County and Obligor 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 payments hereunder or otherwise in any material respect adversely affect any rights of the County under this Agreement.

Section 25. Condemnation

Notwithstanding Section 24 above, 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 any one or more of the conditions or agreements contained in this Agreement, or as a result of an act or omissions or negligence 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 payments set forth in Sections 5 and 6. In no event shall this Section 26 be construed as a limitation of the County's rights to contribution or indemnification under the New York Civil Procedure Laws and Rules.

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 or the Property.

Deer Park LIRR Station

Section 27.02 Lessee may choose to terminate this Agreement by providing at least 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 **Sections 5 or 6** 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 Notice of Default 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 the Notice of Default and continues diligently such substantial performance without interruption except for causes beyond its control); or
- (3) Subject to the provisions of *Section 24.02(f)*, 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) Subject to the provisions of *Section 24.02(f)*, 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), and (6) above are collectively referred to herein as a "Non-Monetary Event of Default."

Deer Park LIRR Station

Section 27.04 Subject to the provisions of **Section 24**, 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 Premises. Such termination to be effective on the date specified in the a notice of termination (“Notice of Termination”), which date shall not be less than thirty (30) Days from the date of the notice (“Termination Date”), in the event Lessee has not cured the default. In such case, Lessee’s rights to the possession of the Premises 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, 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), the County shall not be entitled to terminate this Agreement or evict Lessee from the Premises 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 efforts by the County to cure such 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 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 **Sections 16** and **24**, and subject to the limitations set forth in *Section 27.05* above, following the date specified in the Notice of Termination 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, the County may receive and retain the proceeds of such sale, which shall be the property of the County.

Section 27.08 Subject to the limitations set forth in *Section 27.05* above, 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 the 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 27.09 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

Deer Park LIRR Station

right or remedy of that Party in respect of such breach or any subsequent breach. The 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 the County to recover any payments then owing by Lessee which are not paid in full.

Section 27.10 Except for the monetary obligations of Lessee, the 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 27.11 In the event the 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 the 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 27.12 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 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 27.13* 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 the County, to the Department, Attn: Commissioner, at the Department's address first above set forth; or, (c) at such other address as Lessee or the 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 the 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 the County, to the Department at the Department's 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 the 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) to the extent permitted under this Agreement, to 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 Party so requested shall: enter into any reasonable amendment hereto (aa) to correct an error in this Agreement, or (bb) to amend the legal description attached hereto, including replacing said legal description with a revised description prepared or provided by Lessee's or the County'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. Local Preference

Lessee shall use commercially reasonable efforts to use building trades contractors and subcontractors located and doing business within Suffolk County or Nassau County. For purposes of this Agreement, 'located and doing business within Suffolk County or Nassau County' means (i) maintaining a place of business and staffed, operational office at an address within the geographical boundaries of Suffolk County or Nassau County for a period of at least one year, from which employees who perform services of the type Lessee will be contacting for are assigned, and (ii) maintaining during such period an active

Deer Park LIRR Station

field staff of such employees performing services within Suffolk or Nassau County. In no event shall this clause be deemed to create a third party benefit to any person or entity.

Section 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. Conflicts of Interest

Section 44.01 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 44.02 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 45. 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 46. 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)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links."

Section 47. Governing Law

Section 47.01 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 47.02 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 48. 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 49. 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 50. 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 51. 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 52. Entire Agreement

Section 52.01 This Agreement consists of the following: **Sections 1 through 52** 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 52.02 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: SCOTT NELSON
Title: _____
Date: Vice President, Development Operations
3-11-10

COUNTY OF SUFFOLK

By: _____
Title: Deputy County Executive
Date: 3/22/10

**APPROVED BY:
DEPARTMENT OF ENVIRONMENT AND
ENERGY**

By: _____
Name: Carrie Meek-Gallagher
Title: Commissioner
Date: 3/1/10

**APPROVED BY:
DEPARTMENT OF PUBLIC WORKS**

By: _____
Name: Gilbert Anderson
Title: Commissioner
Date: 3/1/10

**APPROVED AS TO LEGALITY
CHRISTINE MALAFI**

Suffolk County Attorney

By: _____
Name: Basia Deren Braddish
Title: Asst. County Attorney
Date: 2/26/10

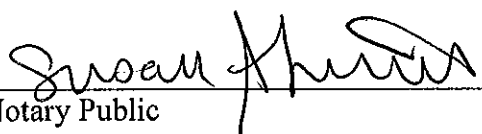
ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the 22nd day of March in the year 2010 before me, the undersigned, personally appeared Christopher E. Kent [name], Chief Deputy County Exec [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

SUSAN A LIENAU
NOTARY PUBLIC-STATE OF NEW YORK
No. 0116148903
Qualified in Suffolk County
My Commission Expires July 03, 2010

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

Deer Park LIRR Station

STATE OF CALIFORNIA

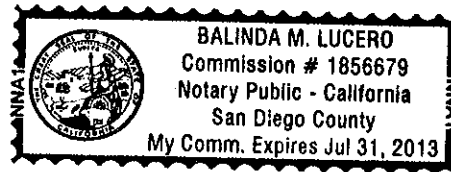
COUNTY OF San Diego) ss.

On March 11, 2010, before me Balinda M. Lucero, a Notary Public, personally appeared Scott Nelson, 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.

Balinda M. Lucero
Notary's Signature



[Notary Seal]

EXHIBIT A
DESCRIPTION OF PROPERTY

Legal Description of Property

That certain real property located at the Deer Park Long Island Rail Road Station located at the intersection of Grant Ave and Long Island Ave in the Town of Islip, County of Suffolk, State of New York, more particularly described as:

Tax Map Nos. 0500-179.00-02.00-097.001 & 0500-179.00-02.00-098.002

Parcel Acreage : 15

EXHIBIT B
CASH FLOW PAYMENTS

Cash Flow Estimate – Deer Park Long Island Rail Road Station

Estimated Project Size: 2.4MWdc

Estimated Annual Operating Payment: \$ 60,881*

Estimated Quarterly Operating Payment: \$ 15,220*

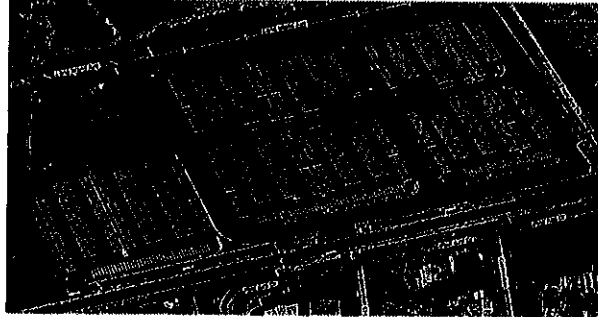
*The parties acknowledge and agree that the above Cash Flow Estimate is based upon an estimate of the size of the Solar Energy System which once completed, may be smaller or larger than the estimated size as set forth in this Exhibit B. Once the size of the Solar Energy System is determined, and prior to the issuance of the building permit, the parties shall execute an amendment to the Agreement to specify the Quarterly Operating Payments payable by Lessee under this Agreement based upon the following formula: $\text{Actual Project Size} \times \$ 25,063 \text{ (Amount per MWdc)} = \text{Annual Operating Payment} / 4 = \text{Quarterly Operating Payment}$

EXHIBIT C
APPROVED SITE PLAN

Site S-6 (Deer Park LIRR Station)

Location

The Deer Park LIRR project site is located in the hamlet of Deer Park in the Town of Islip . The property is bordered on the south by the LIRR rail bed and train station; to the northeast by commercial subdivisions; to the northwest by the Edgewood Oak Brush Plains Preserve; and to the east by a golf driving range.



Site Layout

The current site design of the 2.25MW AC is composed of a single project of 237,000 square feet and provides shading to roughly 1,200 parking spaces. In total the project area has six distinct parking sections that total 39 solar arrays.

Technical Components

The 2.25MW AC the Deer Park LIRR project site is expected to be the sixth largest project site of the seven ELI Solar Project sites. Once constructed the project could have up to 9,700 Suntech 270watt solar modules, one 250kW and four 500kW inverters and up-to 1,924 lineal feet of trenching on previously disturbed areas.

Interconnection

Deer Park will have one Point of Common Coupling to LIPA's 13.8 kV distribution system. The PCC will be located on the far western side of the parking lot in the middle. From the PCC an underground line will run 50 feet to tap into LIPA's interconnection network.

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Figure 2.4-1f
S-6:
Deer Park
LIRR Station
Conceptual Layout
 Grand Ave. & Union Island Ave
 Deer Park, New York

Site Characteristics
 Layout Type: Carpet
 AZ System Size: 2250 MW
 Inverter Capacity: 2700 MW
 Module Size: 210
 Module Count: 9,528
 Inverters: 4,764 MW
 Transformers: 180

Legend

Scale: 1" = 160'





EXHIBIT D
FORM OF LETTER OF CREDIT/BOND

Date: _____
Bank Ref.: _____
Amount: US\$ _____
Expiry Date: _____

[Beneficiary
[Beneficiary
[City, State ZIP]

Name]
Address]

Re: [Project and Agreement]

By the order of our client, enXco Development Corporation (“**Applicant**”), 700 La Terraza Boulevard, #200, Escondido, CA 92025, and for the account of EDF Energies Nouvelles (“**Account Party**”), we, [NAME OF ISSUING BANK] (“**Issuer**”), hereby issue our Irrevocable Letter of Credit No. _____ in favor of [Beneficiary Name] (“**Beneficiary**”), [Beneficiary Address] [City, State ZIP], for an amount not to exceed USD _____ Dollars (\$_____), pursuant to that certain [Name of Agreement giving rise to LOC obligation]ii _____ (“**Agreement**”), between Applicant and Beneficiary. This Letter of Credit shall become effective on [date] and shall expire no later than [Expiration Date].

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. _____ accompanied by your statement signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [specify place of presentation of documents]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds. Partial draws are permitted under this Letter of Credit.

This Irrevocable Letter of Credit is transferable by Beneficiary in its entirety, but not in part, against the presentation of transfer instructions in the form attached hereto as Exhibit B. Issuer shall effect such a transfer only upon receipt of the original Letter of Credit and any amendment(s) thereto. Upon such presentation, Issuer shall forthwith transfer this Letter of Credit to the transferee by issuing an irrevocable Letter of Credit to such transferee with provisions substantially identical to those contained in this Letter of Credit No. _____, including the provisions for transfer set forth in this paragraph.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credit (2007 Revision) International Chamber of Commerce Publication No. 600 (the “**UCP**”),

except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*specify address*], referring specifically to Issuer's Letter of Credit No. _____. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*specify telephone number*] and have this Letter of Credit available.

[SIGNATURE PAGE FOLLOWS]

[Name of Issuer]

By: _____

Name:

Title:

EXHIBIT E
INTENTIONALLY OMITTED

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)<<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

LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

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

Premises: Part of the Property known as the H. Lee Dennison Complex,

100 Veterans Memorial Highway, Hauppauge, New York 11788

Date: February 26, 2010

TABLE OF CONTENTS

	<u>Page</u>
Section 1: Definitions	1
Section 2: Purpose	5
Section 3: Description	6
Section 4: Term	7
Section 5: Payments to County	7
Section 6: Late Charges	8
Section 7: Lessee's Duties and Obligations	8
Section 8: Prevailing Wage	11
Section 9: Other Construction By Lessee	12
Section 10: Requirements of Governmental Agencies	12
Section 11: Liens	13
Section 12: Waiver of Nuisance	13
Section 13: Temporary Storage	13
Section 14: Insurance	14
Section 15: Indemnity and Defense	16
Section 16: Removal and Restoration	17
Section 17: Ownership Attributes	18
Section 18: Hazardous Substances and Waste	18
Section 19: Signs	19
Section 20: Quiet Enjoyment	19
Section 21: Representations, Warranties and Covenants	19
Section 22: Confidentiality	20
Section 23: Successors and Assigns	20
Section 24: Leasehold Financing	21
Section 25: Condemnation	23
Section 26: Additional Fees and Charges	23
Section 27: Termination/Default Remedies and Damages	23
Section 28: Force Majeure	26
Section 29: Notices	27
Section 30: Broker	27
Section 31: Paragraph Headings	27

Section 32:	Legislative Approval	27
Section 33:	Waiver of Jury Trial	27
Section 34:	Off-set of Arrears or Default	28
Section 35:	Cooperation on Claims	28
Section 36:	Intentionally Omitted	28
Section 37:	Local Preference	28
Section 38:	Not a Co-Partnership or Joint Venture	29
Section 39:	Independent Contractor	29
Section 40:	County Representatives	29
Section 41:	No Credit	29
Section 42:	No Implied Waiver	29
Section 43:	Certification	29
Section 44:	Conflicts of Interest	30
Section 45:	Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction	30
Section 46:	Suffolk County Legislative Requirements	30
Section 47:	Governing Law	30
Section 48:	Severability	30
Section 49:	Interpretations	31
Section 50:	Memorandum	31
Section 51:	Execution in Counterparts	31
Section 52:	Entire Agreement	31
	Signature Page	32

EXHIBITS

Exhibit A	– Descriptions of Property
Exhibit B	– Cash Flow Payments
Exhibit C	– Approved Site Plan
Exhibit D	– Form of Surety Bond
Exhibit E	– Liens and Encumbrances
Exhibit F	– Legislative Requirements
Exhibit G	– Form of Memorandum of Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement"), made as of March 22 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 last date of execution of this Agreement.

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

"Control" and the terms "controlled by" and "under common control with" mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity or ownership interest of such Person.

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.

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

Environmental Attributes: means 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: means 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",

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“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: means 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 first 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.

Person: means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, general partnership, limited liability company or government or any agency or political subdivision thereof or other entity;

PILOTS: means payments in lieu of taxes.

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

Pre-Operating Annual Payments: means ~~\$ 4,709.84~~ ^{Four Thousand Seven Hundred Nine & 84/100 Dollars} per annum. *Call*

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

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Principal: when used with respect to any Person, means the chief executive officer, the chief financial officer, the chief operating officer or the chairperson of such Person or a Person that directly or indirectly through one of more intermediaries controls such Person.

Prohibited Person: means (i) any Person (A) that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County unless such default or breach has been waived in writing by the County, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County, unless such default or breach has been waived in writing by the County, or (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Property: means the County property a portion of which is the subject of this Agreement, described in *Section 3.01*.

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. 28-2010 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)*.

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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. 28-2010 of the Suffolk County Legislature, dated the 4th day of February, 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 Premises 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 the 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 the 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 Premises 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 Numbers 500-001-01-043.001, located at H. Lee Dennison Complex, 100 Veterans Memorial Highway, Hauppauge, NY 11788 (the "Property"), in connection with the installation and operation of solar energy conversion equipment,

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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 any buildings, structures, improvements, additions, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or there under pursuant to the terms 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 Premises 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 the County shall not be liable for any latent or patent defect thereon. Lessee may use the Premises 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 Premises 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 the 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 until the Operations Date.

Section 5.02 Commencing with the Operations Date, Lessee shall make quarterly payments to the 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, no later than 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

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generating any particular quantity of electricity or derive any particular amount of receipts therefrom at any time.

Section 5.04 [Intentionally Omitted]

Section 5.05 Nothing contained in this **Section 5** shall affect the survival of the obligations of Lessee as set forth in this Agreement.

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 the County at the County's address set forth herein or at such other place as the 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% per month 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 under this Agreement, the County shall have no liabilities or obligations of any kind to any contractors or subcontractors engaged by Lessee or for any other matter in connection with the construction of the Improvements. Lessee shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fine, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence, or any acts or omissions of Lessee's contractors or subcontractors, including reimbursement of the cost of reasonable attorneys' fees and other professional fees, incurred by the County, its officers, agents servants, representatives, and employees in any action or proceeding arising or alleged to arise out of, or in connection with construction associated with the Improvements, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

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. The construction schedule shall provide for the completion of all Improvements within twelve (12) months of the receipt of building permits.

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 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 the 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. The County shall not levy any personal property taxes, special assessments or real property taxes on the Solar Energy System during the Term.

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 The 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.

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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 or County's employees, agents or representatives, 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 I written report to the Department, setting forth the findings of such survey and delineating any remedial actions to be taken within forty-five (45) Days of its receipt of such survey.

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. Lessee shall have no obligation for the routine maintenance of the lighting or the electrical charges attributable to the operation of the lighting.

Section 7.18 Lessee understands that the Property may be located in high wind region of New York State. All designs shall be prepared with a reasonable degree of certainty to 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

Regardless of whether the construction of the Improvements is deemed a public works project for purposes of determining applicability of Section 220 of the Labor Law, 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 the 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

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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, the County may cancel or discharge the same and upon the 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 or 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 the 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 thereunder 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, and such endorsement shall not limit, vary, change, or affect the protections afforded the County thereunder 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 thereunder with respect to any claim or action against the County by Lessee shall be the same as the protections afforded Lessee thereunder 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 the 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 the 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 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 agrees not to act unreasonably hereunder in rendering a determination that the policies and/or carriers are unsatisfactory. 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 and Defense

Section 15.01 Lessee shall protect, indemnify and hold harmless the County, its officers, officials, employees, agents, servants, contractors, and representatives, from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, 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 or the Premises under this Agreement, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with the Lessee's use of the Property or the Premises, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

Section 15.02 Lessee hereby represents and warrants that Lessee shall not infringe upon any copyright work or material in accordance with the Federal Copyright Act in connections with Lessee's use of the Property or Premises during the term of this Agreement. Lessee shall protect, indemnify, and hold harmless the County and its officers, officials, employees, contractors, agents, servants, representatives, and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions arising out of or in connection with any claim asserted for infringement of copyright, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright.

Section 15.03 Lessee shall defend the County and its officers, officials, employees, agents, servants, contractors, representatives, and other persons in any suit, including appeals, arising out of, or connection with the Lessee's use of the Property or Premises or any copyright infringement proceeding or action. At the County's option, the County may defend any such proceeding or action and require Lessee to pay reasonable attorney's fees incurred by the County for the defense.

Section 15.04 For any claim for which Lessee shall be required to indemnify or defend the County, its officers, officials, employees, agents, servants, contractors, or representatives, 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 or settlement of the claim on the County's behalf.

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 abandon all or any part of the Improvements, the Improvements may be retained by the County as its property or may be stored or disposed of as the County may see fit. If the Improvements not so removed shall be sold, the County may receive and retain the proceeds of such sale and apply the same, at the County's option, against the reasonable expenses of the sale, moving and storage, payment arrears, and any damages to which the County may be entitled. Any excess proceeds from such sale shall be the property of the County. 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* which are not otherwise recovered by the sale of the property.

Section 16.02 In the event the County requires a decommissioning surety, the County shall give Lessee written notice no earlier than nine (9) year(s) from the Effective Date to require Lessee to provide the County with a bond or one or more letters of credit with the 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, the 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 the County. In the event the County is not in agreement with Lessee's estimate, the 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, the County may request that Lessee provide the

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County with information and documentation to confirm the existence and maintenance of such security in favor of the 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 the County the reasonable fees incurred by the 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 the 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

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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 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.* The 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

Section 23.01 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 sublet the Premises or any part thereof, by operation of law or otherwise. Except as otherwise provided in **Section 24** below, Lessee shall not assign the Agreement or any portion thereof without the prior written consent of the County in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. In the event a request to assign is made by Lessee, considerations which may be taken into account by the County include, but are not limited to: (i) the financial capacity of the proposed assignee in relation to the Agreement obligations, with sufficient, reasonably detailed financial information to make a judgment; (ii) the experience of the proposed assignee in the ownership and operation of similar assets as those referenced under this Agreement; and (iii) the general business reputation of the proposed assignee and whether the proposed assignee or any Principal thereof is a Prohibited Person. The proposed assignee shall submit to the County all forms set forth on **Exhibit F** to this Agreement that are required to be submitted pursuant to applicable Legislative Requirements. The County shall grant or deny any request by Lessee to assign this Agreement within twenty (20) days after delivery to the County of Lessee's written request, setting forth the identity of the proposed assignee, its Principals, financials, and such other information described hereunder which will assist the County in making its decision.

Section 23.02 Any attempt by Lessee to assign this Agreement or a portion thereof without the County's prior written consent 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 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 unconditionally assume all of Lessee's obligations under this Agreement in writing, pursuant to a written assignment and assumption agreement. Each assignment and assumption shall be in writing, and Lessee shall deliver to the County a fully-executed original of such assignment and assumption 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**" under this **Section 24**) 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 thirty (30) Days of the Solar Energy Estate being encumbered, such notice to include the name and address of the Lender and verification of recording data, and the County is given written notice of each amendment or other modification or supplement to the related instruments.

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

- (a) The County will not amend or modify, or take any action causing, consenting to or accepting an 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 without the prior written consent of such Lender.
- (b) Lenders 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. Notwithstanding this right, each Lender shall notify the County in writing as soon as practicable that it will or has performed an act on behalf of the Obligor.
- (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 Obligor 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. If the County shall become entitled to terminate this Agreement due to an uncured Event of Default, as defined in *Section 27.03*, by Obligor, the County will not terminate this Agreement unless it has first provided a Notice to Default to each Registered Lender, giving each Registered Lender at least thirty (30) Days after the expiration of the cure period which this Agreement provides to Obligor under *Section 27.01* to cure the Event of Default itself. If within such thirty (30) Day period subsequent to the expiration of the cure period a Registered Lender notifies the County in writing 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, as defined in *Section 27.03*, 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 the Registered Lender does not cure the Event of Default, or the Registered Lender does not exercise due diligence to foreclose or acquire Obligor's interest under this Agreement and to perform or cause to be all of the covenants and agreements to be performed and observed by Obligor, the County may terminate this Agreement. 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 under this Agreement and the Improvements.

- (d) Subject to the provisions of paragraph (e) below, the County shall, upon written request of the Registered Lender made within forty (40) Days after notice to such Registered Lender, enter into a new lease agreement with such Registered Lender 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, and shall be 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 under this Agreement, (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) If more than one Registered Lender shall request a new lease agreement pursuant to paragraph (d) above, the County shall enter into such new lease agreement with the Lender whose mortgage is prior in lien. The County, without liability to Obligor or any Lender with an adverse claim, may rely upon a title insurance policy issued by a responsible title insurance company doing business in the county where the Premises are located naming the County and the lessee under such new lease agreement as insureds (and paid for by such lessee), as the basis for determining the appropriate Lender who is entitled to such new lease agreement.
- (f) 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 payments and other charges payable by Lessee continue to be paid in accordance with the terms of this Agreement.
- (g) The time available to a 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 Lender's reasonable control. 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.
- (h) Upon the request of a Registered Lender, the County and Obligor 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 payments hereunder or otherwise in any material respect adversely affect any rights of the County under this Agreement.

Section 25. Condemnation

Notwithstanding Section 24 above, 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 any one or more of the conditions or agreements contained in this Agreement, or as a result of an act or omissions or negligence 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 payments set forth in Sections 5 and 6. In no event shall this Section 26 be construed as a limitation of the County's rights to contribution or indemnification under the New York Civil Procedure Laws and Rules.

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 or the Property.

Section 27.02 Lessee may choose to terminate this Agreement by providing at least 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 **Sections 5 or 6** 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 Notice of Default 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 the Notice of Default and continues diligently such substantial performance without interruption except for causes beyond its control); or
- (3) Subject to the provisions of *Section 24.02(f)*, 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) Subject to the provisions of *Section 24.02(f)*, 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), and (6) above are collectively referred to herein as a "Non-Monetary Event of Default."

Section 27.04 Subject to the provisions of **Section 24**, 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 Premises. Such termination to be effective on the date specified in the a notice of termination ("Notice of Termination"), which date shall not be less than thirty (30) Days from the date of the notice

("Termination Date"), in the event Lessee has not cured the default. In such case, Lessee's rights to the possession of the Premises 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, 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), the County shall not be entitled to terminate this Agreement or evict Lessee from the Premises 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 efforts by the County to cure such 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 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 **Sections 16 and 24**, and subject to the limitations set forth in *Section 27.05* above, following the date specified in the Notice of Termination 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, the County may receive and retain the proceeds of such sale, which shall be the property of the County.

Section 27.08 Subject to the limitations set forth in *Section 27.05* above, 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 the 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 27.09 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. The 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 the County to recover any payments then owing by Lessee which are not paid in full.

Section 27.10 Except for the monetary obligations of Lessee, the 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 27.11 In the event the 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 the 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 27.12 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 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 27.13* 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.

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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 the County, to the Department, Attn: Commissioner, at the Department's address first above set forth; or, (c) at such other address as Lessee or the 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 the 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 the County, to the Department at the Department's 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 the 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

H. Lee Dennison Bldg.

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) to the extent permitted under this Agreement, to 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 Party so requested shall: enter into any reasonable amendment hereto (aa) to correct an error in this Agreement, or (bb) to amend the legal description attached hereto, including replacing said legal description with a revised description prepared or provided by Lessee's or the County'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. Local Preference

Lessee shall use commercially reasonable efforts to use building trades contractors and subcontractors located and doing business within Suffolk County or Nassau County. For purposes of this Agreement, 'located and doing business within Suffolk County or Nassau County' means (i) maintaining a place of business and staffed, operational office at an address within the geographical boundaries of Suffolk County or Nassau County for a period of at least one year, from which employees who perform services of the type Lessee will be contacting for are assigned, and (ii) maintaining during such period an active

H. Lee Dennison Bldg.

field staff of such employees performing services within Suffolk or Nassau County. In no event shall this clause be deemed to create a third party benefit to any person or entity.

Section 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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.

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Section 44. Conflicts of Interest

Section 44.01 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 44.02 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 45. 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 46. 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>](http://www.co.suffolk.ny.us). Click on "Laws of Suffolk County" under "Suffolk County Links."

Section 47. Governing Law

Section 47.01 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 47.02 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 48. 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.

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Section 49. 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 50. 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 51. 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 52. Entire Agreement

Section 52.01 This Agreement consists of the following: **Sections 1** through **52** 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 52.02 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 -

H. Lee Dennison Bldg.

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: [Signature]
Name: SCOTT NELSON
Title: Vice President, Development Operations
Date: 3-11-10

COUNTY OF SUFFOLK

By: [Signature]
Title: Deputy County Executive
Date: 3/22/10

**APPROVED BY:
DEPARTMENT OF ENVIRONMENT AND
ENERGY**

By: [Signature]
Name: Carrie Meek-Gallagher
Title: Commissioner
Date: 3/11/10

**APPROVED BY:
DEPARTMENT OF PUBLIC WORKS**

By: [Signature]
Name: Gilbert Anderson
Title: Commissioner
Date: 3/11/10

**APPROVED AS TO LEGALITY
CHRISTINE MALAFI
Suffolk County Attorney**

By: [Signature]
Name: Basia Deren Braddish
Title: Asst. County Attorney
Date: 2/26/10

ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the 22nd day of March in the year 2010 before me, the undersigned, personally appeared Christopher E. Kent [name], Chief Deputy County Excc. [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.

Susan A. Lienu

Notary Public

SUSAN A LIENAU
NOTARY PUBLIC-STATE OF NEW YORK
No. 0116148903
Qualified in Suffolk County
My Commission Expires July 03, 2010

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

H. Lee Dennison Bldg.

STATE OF CALIFORNIA)
COUNTY OF San Diego) ss.

On March 11, 2010, before me, Balinda M. Lucero, a Notary Public, personally appeared Scott Nelson, 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.

Balinda M. Lucero
Notary's Signature



[Notary Seal]

EXHIBIT A
DESCRIPTION OF PROPERTY

Legal Description of Property

That certain real property located at 100 Veteran's Memorial Highway in the Town of Islip, County of Suffolk, State of New York, more particularly described as:

Tax Map No. 0500-001.00-01.00-043.001

Parcel Acreage: _____39.4_____

[A more precise legal description will be attached upon receipt of a preliminary title report and/or legal description prepared by surveyor.]

EXHIBIT B
CASH FLOW PAYMENTS

Cash Flow Estimate – H Lee Dennison Building Complex

Estimated Project Size: 1.9MWdc

Estimated Annual Operating Payment: \$ 47,098*

Estimated Quarterly Operating Payment: \$ 11,775*

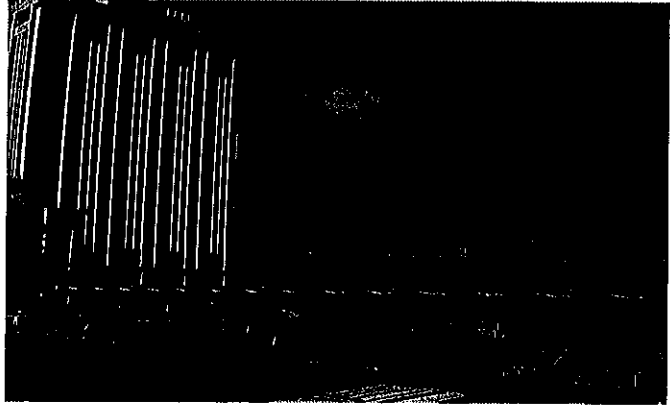
*The parties acknowledge and agree that the above Cash Flow Estimate is based upon an estimate of the size of the Solar Energy System which once completed, may be smaller or larger than the estimated size as set forth in this Exhibit B. Once the size of the Solar Energy System is determined, and prior to the issuance of the building permit, the parties shall execute an amendment to the Agreement to specify the Quarterly Operating Payments payable by Lessee under this Agreement based upon the following formula: Actual Project Size x \$ 25,063 (Amount per MWdc) = Annual Operating Payment/4 = Quarterly Operating Payment

EXHIBIT C
APPROVED SITE PLAN

Site S-2 (H. Lee Dennison Complex)

Location

The H. Lee Dennison Complex project site is located in the hamlet of Hauppauge in the Town of Islip at 100 Veterans Memorial Highway, Hauppauge, NY with a site design of 1.75 MW AC of solar power capacity. Located within a mixed use area, this complex abuts New York State's District Office Complex to the east. To the immediate north the property abuts NY 347/454, followed by the County's Blydenburgh Park and the County's North Complex to the northeast; to the south and west by residential subdivisions.



Site Layout

The current site design of 1.75MW AC is composed of two project areas that approximately total 184,000 square feet of parking area and provide shading to approximately 949 parking spaces. The first project area is located north of the H. Lee Dennison Building and is composed of 14 solar arrays that total roughly 1MW AC of solar power. This second project area is located in the southern parking lot and is composed of 10 solar arrays that total 750kWAC.

Technical Components

The 1.75MW AC H. Lee Dennison Complex project site is expected to be the fourth largest project site of the seven Eastern Long Island Solar project sites. Once constructed this project site could have up to 7,700 Suntech 270watt solar modules, one 250kW and three 500kW inverters, and up-to 1,400 lineal feet of electrical trenching.

Interconnection

The H Lee Dennison project site will host two points of Point of Common Coupling that will be connected to LIPA's distribution network at the 13.8 kV distribution level. PCC #1 is located in the northeast corner of the north parking lot by the east entrance. From PCC#1 an underground power line will run from the step-up transformer along the north along the west side of County Access Road approximately 550 feet and cross underground to the north side of Veteran's Memorial Highway and will run 100 feet east to and tie into an overhead 13.8kV line LIPA distribution line. PCC#2 is located in the south eastern portion of the southern parking lot near the east parking lot entrance. From PCC#2 an underground electrical line will run north along the west side of County Access Road and merge into the same electrical trench connecting PCC#1 into LIPA's 13.8kV distribution network.



Figure 2.4-1b
S-2:

**H. Lee Dennison
Complex
Conceptual Layout**

1001 Veterans Memorial Highway
Rampage, New York

Site Characteristics

Layout Type: Campus
AC System Size: 1750 kW
DC System Size: 2000 kW
Module Count: 277
Inverter Count: 139
Transformer: TBD

Legend

- Site Boundary
- Access Road
- Building Footprint
- Parking Lot
- Utility Line
- Water Feature
- Topography
- Vegetation
- Other

Scale: 1" = 250'



County Access Road

County Access Road

County Access Road

Northfield Road

178

EXHIBIT D
FORM OF LETTER OF CREDIT/BOND

Date: _____
Bank Ref.: _____
Amount: US\$ _____
Expiry Date: _____

[Beneficiary _____ Name]
[Beneficiary _____ Address]
[City, State ZIP]

Re: [Project and Agreement]

By the order of our client, enXco Development Corporation (“**Applicant**”), 700 La Terraza Boulevard, #200, Escondido, CA 92025, and for the account of EDF Energies Nouvelles (“**Account Party**”), we, [NAME OF ISSUING BANK] (“**Issuer**”), hereby issue our Irrevocable Letter of Credit No. _____ in favor of [Beneficiary Name] (“**Beneficiary**”), [Beneficiary Address] [City, State ZIP], for an amount not to exceed USD _____ Dollars (\$_____), pursuant to that certain [Name of Agreement giving rise to LOC obligation]|| _____ (“**Agreement**”), between Applicant and Beneficiary. This Letter of Credit shall become effective on [date] and shall expire no later than [Expiration Date].

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. _____ accompanied by your statement signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [specify place of presentation of documents]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds. Partial draws are permitted under this Letter of Credit.

This Irrevocable Letter of Credit is transferable by Beneficiary in its entirety, but not in part, against the presentation of transfer instructions in the form attached hereto as Exhibit B. Issuer shall effect such a transfer only upon receipt of the original Letter of Credit and any amendment(s) thereto. Upon such presentation, Issuer shall forthwith transfer this Letter of Credit to the transferee by issuing an irrevocable Letter of Credit to such transferee with provisions substantially identical to those contained in this Letter of Credit No. _____, including the provisions for transfer set forth in this paragraph.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credit (2007 Revision) International Chamber of Commerce Publication No. 600 (the “**UCP**”),

except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*specify address*], referring specifically to Issuer's Letter of Credit No. _____. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*specify telephone number*] and have this Letter of Credit available.

[SIGNATURE PAGE FOLLOWS]

[Name of Issuer]

By: _____

Name:

Title:

EXHIBIT E
INTENTIONALLY OMITTED

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)<<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.

H. Lee Dennison Bldg.

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

LA0016

North County Complex Ground Lease 2-22-10

LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

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

Premises: Part of the Property known as North County Complex

Hauppauge, New York

Date: February 26, 2010

TABLE OF CONTENTS

	<u>Page</u>
Section 1: Definitions	1
Section 2: Purpose	5
Section 3: Description	6
Section 4: Term	7
Section 5: Payments to County	7
Section 6: Late Charges	8
Section 7: Lessee's Duties and Obligations	8
Section 8: Prevailing Wage	11
Section 9: Other Construction By Lessee	12
Section 10: Requirements of Governmental Agencies	12
Section 11: Liens	13
Section 12: Waiver of Nuisance	13
Section 13: Temporary Storage	13
Section 14: Insurance	14
Section 15: Indemnity and Defense	16
Section 16: Removal and Restoration	17
Section 17: Ownership Attributes	18
Section 18: Hazardous Substances and Waste	18
Section 19: Signs	19
Section 20: Quiet Enjoyment	19
Section 21: Representations, Warranties and Covenants	19
Section 22: Confidentiality	20
Section 23: Successors and Assigns	20
Section 24: Leasehold Financing	21
Section 25: Condemnation	23
Section 26: Additional Fees and Charges	23
Section 27: Termination/Default Remedies and Damages	23
Section 28: Force Majeure	26
Section 29: Notices	27
Section 30: Broker	27
Section 31: Paragraph Headings	27

Section 32: Legislative Approval	27
Section 33: Waiver of Jury Trial	27
Section 34: Off-set of Arrears or Default	28
Section 35: Cooperation on Claims	28
Section 36: Intentionally Omitted	28
Section 37: Local Preference	28
Section 38: Not a Co-Partnership or Joint Venture	29
Section 39: Independent Contractor	29
Section 40: County Representatives	29
Section 41: No Credit	29
Section 42: No Implied Waiver	29
Section 43: Certification	29
Section 44: Conflicts of Interest	30
Section 45: Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction	30
Section 46: Suffolk County Legislative Requirements	30
Section 47: Governing Law	30
Section 48: Severability	30
Section 49: Interpretations	31
Section 50: Memorandum	31
Section 51: Execution in Counterparts	31
Section 52: Entire Agreement	31
Signature Page	32

EXHIBITS

- Exhibit A – Descriptions of Property
- Exhibit B – Cash Flow Payments
- Exhibit C – Approved Site Plan
- Exhibit D – Form of Surety Bond
- Exhibit E – Liens and Encumbrances
- Exhibit F – Legislative Requirements
- Exhibit G – Form of Memorandum of Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), made as of March 22 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 last date of execution of this Agreement.

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

"Control" and the terms "controlled by" and "under common control with" mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity or ownership interest of such Person.

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: means 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: means 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",

North County Complex

“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: means 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 first 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.

Person: means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, general partnership, limited liability company or government or any agency or political subdivision thereof or other entity;

PILOTS: means payments in lieu of taxes.

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

Pre-Operating Annual Payments: means \$ 2,088.75 per annum.

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

North County Complex

Principal: when used with respect to any Person, means the chief executive officer, the chief financial officer, the chief operating officer or the chairperson of such Person or a Person that directly or indirectly through one or more intermediaries controls such Person.

Prohibited Person: means (i) any Person (A) that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County unless such default or breach has been waived in writing by the County, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County, unless such default or breach has been waived in writing by the County, or (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Property: means the County property a portion of which is the subject of this Agreement, described in *Section 3.01*.

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. 28-2010 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. 28-2010 of the Suffolk County Legislature, dated the 4th day of February, 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 Premises 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 the 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 the 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 Premises 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 Numbers 800-154-04-001.001, and further identified as North County Complex, Veterans Memorial Highway, Hauppauge, New York (the "**Property**"), in connection with the installation and operation of solar energy conversion

North County Complex

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 any buildings, structures, improvements, additions, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or there under pursuant to the terms 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 Premises 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 the County shall not be liable for any latent or patent defect thereon. Lessee may use the Premises 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 Premises 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 the 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 until the Operations Date.

Section 5.02 Commencing with the Operations Date, Lessee shall make quarterly payments to the 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, no later than 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

North County Complex

generating any particular quantity of electricity or derive any particular amount of receipts therefrom at any time.

Section 5.04 [Intentionally Omitted]

Section 5.05 Nothing contained in this **Section 5** shall affect the survival of the obligations of Lessee as set forth in this Agreement.

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 the County at the County's address set forth herein or at such other place as the 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% per month 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

North County Complex

reserved to itself under this Agreement, the County shall have no liabilities or obligations of any kind to any contractors or subcontractors engaged by Lessee or for any other matter in connection with the construction of the Improvements. Lessee shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fine, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence, or any acts or omissions of Lessee's contractors or subcontractors, including reimbursement of the cost of reasonable attorneys' fees and other professional fees, incurred by the County, its officers, agents servants, representatives, and employees in any action or proceeding arising or alleged to arise out of, or in connection with construction associated with the Improvements, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

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. The construction schedule shall provide for the completion of all Improvements within twelve (12) months of the receipt of building permits.

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 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 the 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. The County shall not levy any personal property taxes, special assessments or real property taxes on the Solar Energy System during the Term.

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 The 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.

North County Complex

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 or County's employees, agents or representatives, 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 l written report to the Department, setting forth the findings of such survey and delineating any remedial actions to be taken within forty-five (45) Days of its receipt of such survey.

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. Lessee shall have no obligation for the routine maintenance of the lighting or the electrical charges attributable to the operation of the lighting.

Section 7.18 Lessee understands that the Property may be located in high wind region of New York State. All designs shall be prepared with a reasonable degree of certainty to 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

Regardless of whether the construction of the Improvements is deemed a public works project for purposes of determining applicability of Section 220 of the Labor Law, 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 the 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

North County Complex

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, the County may cancel or discharge the same and upon the 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;

North County Complex

- (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 the 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 thereunder 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, and such endorsement shall not limit, vary, change, or affect the protections afforded the County thereunder 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 thereunder with respect to any claim or action against the County by Lessee shall be the same as the protections afforded Lessee thereunder 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 the 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 the 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 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

North County Complex

County, Lessee shall promptly obtain a new and satisfactory policy in replacement. The County agrees not to act unreasonably hereunder in rendering a determination that the policies and/or carriers are unsatisfactory. 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 and Defense

Section 15.01 Lessee shall protect, indemnify and hold harmless the County, its officers, officials, employees, agents, servants, contractors, and representatives, from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, 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 or the Premises under this Agreement, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with the Lessee's use of the Property or the Premises, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

Section 15.02 Lessee hereby represents and warrants that Lessee shall not infringe upon any copyright work or material in accordance with the Federal Copyright Act in connections with Lessee's use of the Property or Premises during the term of this Agreement. Lessee shall protect, indemnify, and hold harmless the County and its officers, officials, employees, contractors, agents, servants, representatives, and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions arising out of or in connection with any claim asserted for infringement of copyright, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright.

Section 15.03 Lessee shall defend the County and its officers, officials, employees, agents, servants, contractors, representatives, and other persons in any suit, including appeals, arising out of, or connection with the Lessee's use of the Property or Premises or any copyright infringement proceeding or action. At the County's option, the County may defend any such proceeding or action and require Lessee to pay reasonable attorney's fees incurred by the County for the defense.

Section 15.04 For any claim for which Lessee shall be required to indemnify or defend the County, its officers, officials, employees, agents, servants, contractors, or representatives, 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 or settlement of the claim on the County's behalf.

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 abandon all or any part of the Improvements, the Improvements may be retained by the County as its property or may be stored or disposed of as the County may see fit. If the Improvements not so removed shall be sold, the County may receive and retain the proceeds of such sale and apply the same, at the County's option, against the reasonable expenses of the sale, moving and storage, payment arrears, and any damages to which the County may be entitled. Any excess proceeds from such sale shall be the property of the County. 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* which are not otherwise recovered by the sale of the property.

Section 16.02 In the event the County requires a decommissioning surety, the County shall give Lessee written notice no earlier than nine (9) year(s) from the Effective Date to require Lessee to provide the County with a bond or one or more letters of credit with the 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, the 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 the County. In the event the County is not in agreement with Lessee's estimate, the 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, the County may request that Lessee provide the

North County Complex

County with information and documentation to confirm the existence and maintenance of such security in favor of the 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 the County the reasonable fees incurred by the 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 the 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 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.* The 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**.

North County Complex

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

Section 23.01 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 sublet the Premises or any part thereof, by operation of law or otherwise. Except as otherwise provided in **Section 24** below, Lessee shall not assign the Agreement or any portion thereof without the prior written consent of the County in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. In the event a request to assign is made by Lessee, considerations which may be taken into account by the County include, but are not limited to: (i) the financial capacity of the proposed assignee in relation to the Agreement obligations, with sufficient, reasonably detailed financial information to make a judgment; (ii) the experience of the proposed assignee in the ownership and operation of similar assets as those referenced under this Agreement; and (iii) the general business reputation of the proposed assignee and whether the proposed assignee or any Principal thereof is a Prohibited Person. The proposed assignee shall submit to the County all forms set forth on **Exhibit F** to this Agreement that are required to be submitted pursuant to applicable Legislative Requirements. The County shall grant or deny any request by Lessee to assign this Agreement within twenty (20) days after delivery to the County of Lessee's written request, setting forth the identity of the proposed assignee, its Principals, financials, and such other information described hereunder which will assist the County in making its decision.

Section 23.02 Any attempt by Lessee to assign this Agreement or a portion thereof without the County's prior written consent 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 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 unconditionally assume all of Lessee's obligations under this Agreement in writing, pursuant to a written assignment and assumption agreement. Each assignment and assumption shall be in writing, and Lessee shall deliver to the County a fully-executed original of such assignment and assumption 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**" under this **Section 24**) 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 thirty (30) Days of the Solar Energy Estate being encumbered, such notice to include the name and address of the Lender and verification of recording data, and the County is given written notice of each amendment or other modification or supplement to the related instruments.

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

- (a) The County will not amend or modify, or take any action causing, consenting to or accepting an 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 without the prior written consent of such Lender.
- (b) Lenders 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. Notwithstanding this right, each Lender shall notify the County in writing as soon as practicable that it will or has performed an act on behalf of the Obligor.
- (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 Obligor 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. If the County shall become entitled to terminate this Agreement due to an uncured Event of Default, as defined in *Section 27.03*, by Obligor, the County will not terminate this Agreement unless it has first provided a Notice to Default to each Registered Lender, giving each Registered Lender at least thirty (30) Days after the expiration of the cure period which this Agreement provides to Obligor under *Section 27.01* to cure the Event of Default itself. If within such thirty (30) Day period subsequent to the expiration of the cure period a Registered Lender notifies the County in writing 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, as defined in *Section 27.03*, 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 the Registered Lender does not cure the Event of Default, or the Registered Lender does not exercise due diligence to foreclose or acquire Obligor's interest under this Agreement and to perform or cause to be all of the covenants and agreements to be performed and observed by Obligor, the County may terminate this Agreement. 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 under this Agreement and the Improvements.

- (d) Subject to the provisions of paragraph (e) below, the County shall, upon written request of the Registered Lender made within forty (40) Days after notice to such Registered Lender, enter into a new lease agreement with such Registered Lender 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, and shall be 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 under this Agreement, (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) If more than one Registered Lender shall request a new lease agreement pursuant to paragraph (d) above, the County shall enter into such new lease agreement with the Lender whose mortgage is prior in lien. The County, without liability to Obligor or any Lender with an adverse claim, may rely upon a title insurance policy issued by a responsible title insurance company doing business in the county where the Premises are located naming the County and the lessee under such new lease agreement as insureds (and paid for by such lessee), as the basis for determining the appropriate Lender who is entitled to such new lease agreement.
- (f) 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 payments and other charges payable by Lessee continue to be paid in accordance with the terms of this Agreement.
- (g) The time available to a 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 Lender's reasonable control. 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.
- (h) Upon the request of a Registered Lender, the County and Obligor 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

North County Complex

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 payments hereunder or otherwise in any material respect adversely affect any rights of the County under this Agreement.

Section 25. Condemnation

Notwithstanding Section 24 above, 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 any one or more of the conditions or agreements contained in this Agreement, or as a result of an act or omissions or negligence 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 payments set forth in Sections 5 and 6. In no event shall this Section 26 be construed as a limitation of the County's rights to contribution or indemnification under the New York Civil Procedure Laws and Rules.

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 or the Property.

Section 27.02 Lessee may choose to terminate this Agreement by providing at least 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":

North County Complex

- (1) Lessee shall fail duly and punctually to pay any installment under **Sections 5 or 6** 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 Notice of Default 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 the Notice of Default and continues diligently such substantial performance without interruption except for causes beyond its control); or
- (3) Subject to the provisions of *Section 24.02(f)*, 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) Subject to the provisions of *Section 24.02(f)*, 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), and (6) above are collectively referred to herein as a "Non-Monetary Event of Default."

Section 27.04 Subject to the provisions of **Section 24**, 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 Premises. Such termination to be effective on the date specified in the a notice of termination ("Notice of Termination"), which date shall not be less than thirty (30) Days from the date of the notice

North County Complex

("Termination Date"), in the event Lessee has not cured the default. In such case, Lessee's rights to the possession of the Premises 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, 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), the County shall not be entitled to terminate this Agreement or evict Lessee from the Premises 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 efforts by the County to cure such 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 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 **Sections 16** and **24**, and subject to the limitations set forth in *Section 27.05* above, following the date specified in the Notice of Termination 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, the County may receive and retain the proceeds of such sale, which shall be the property of the County.

Section 27.08 Subject to the limitations set forth in *Section 27.05* above, 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 the 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 27.09 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. The 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 the County to recover any payments then owing by Lessee which are not paid in full.

North County Complex

Section 27.10 Except for the monetary obligations of Lessee, the 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 27.11 In the event the 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 the 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 27.12 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 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 27.13* 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 the County, to the Department, Attn: Commissioner, at the Department's address first above set forth; or, (c) at such other address as Lessee or the 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 the 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 the County, to the Department at the Department's 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 the 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

North County Complex

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) to the extent permitted under this Agreement, to 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 Party so requested shall: enter into any reasonable amendment hereto (aa) to correct an error in this Agreement, or (bb) to amend the legal description attached hereto, including replacing said legal description with a revised description prepared or provided by Lessee's or the County'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. Local Preference

Lessee shall use commercially reasonable efforts to use building trades contractors and subcontractors located and doing business within Suffolk County or Nassau County. For purposes of this Agreement, 'located and doing business within Suffolk County or Nassau County' means (i) maintaining a place of business and staffed, operational office at an address within the geographical boundaries of Suffolk County or Nassau County for a period of at least one year, from which employees who perform services of the type Lessee will be contacting for are assigned, and (ii) maintaining during such period an active

North County Complex

field staff of such employees performing services within Suffolk or Nassau County. In no event shall this clause be deemed to create a third party benefit to any person or entity.

Section 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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 44. Conflicts of Interest

Section 44.01 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 44.02 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 45. 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 46. 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>](http://www.co.suffolk.ny.us). Click on "Laws of Suffolk County" under "Suffolk County Links."

Section 47. Governing Law

Section 47.01 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 47.02 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 48. 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 49. 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 50. 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 51. 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 52. Entire Agreement

Section 52.01 This Agreement consists of the following: **Sections 1** through **52** 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 52.02 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: SCOTT NELSON
Title: Vice President, Development Operations
Date: 3-11-10

COUNTY OF SUFFOLK

By: _____
Title: Deputy County Executive
Date: 3/22/10

**APPROVED BY:
DEPARTMENT OF ENVIRONMENT AND
ENERGY**

By: _____
Name: Carrie Meek-Gallagher
Title: Commissioner
Date: 3/11/10

**APPROVED BY:
DEPARTMENT OF PUBLIC WORKS**

By: _____
Name: Gilbert Anderson
Title: Commissioner
Date: 3/11/10

**APPROVED AS TO LEGALITY
CHRISTINE MALAFI
Suffolk County Attorney**

By: _____
Name: Basil Deren Braddish
Title: Asst. County Attorney
Date: 2/26/10

ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the 22nd day of March in the year 2010 before me, the undersigned, personally appeared Christopher E. Kent [name], Chief Deputy County Exec [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.

Susan A. Lienau

Notary Public

SUSAN A LIENAU

NOTARY PUBLIC-STATE OF NEW YORK

No. 01116148903

Qualified in Suffolk County

My Commission Expires July 03, 2010

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

North County Complex

STATE OF CALIFORNIA

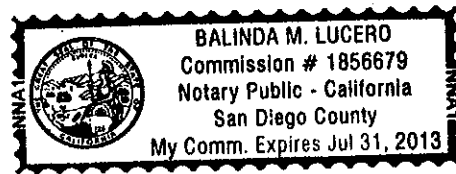
COUNTY OF San Diego) ss.

On March 11, 2010, before me, Balinda M. Lucero, a Notary Public, personally appeared Scott Nelson, 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.

Balinda M. Lucero
Notary's Signature



[Notary Seal]

North County Complex

EXHIBIT A
DESCRIPTION OF PROPERTY

That certain real property located at 725 Veterans Memorial Highway in the Town of Smithtown, County of Suffolk, State of New York, more particularly described as:

Suffolk County Tax Map # 0800-154-04-001.001

Parcel Acreage: ±56.6 acres

[A more precise legal description of the premises will be attached upon receipt of a preliminary title report and/or legal description prepared by surveyor.]

EXHIBIT B
CASH FLOW PAYMENTS

Cash Flow Estimate – North County Complex

Estimated Project Size: 0.8MWdc

Estimated Annual Operating Payment: \$ 20,301*

Estimated Quarterly Operating Payment: \$ 5,075*

*The parties acknowledge and agree that the above 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 this 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 the Agreement to specify the Quarterly Operating Payments payable by Lessee under this Agreement based upon the following formula: Actual Project Size x \$ 25,063 (Amount per MWdc) = Annual Operating Payment/4 = Quarterly Operating Payment

EXHIBIT C APPROVED SITE PLAN

Site S-7 (North County Complex)

Location

The Suffolk County North County Complex project site is located in the hamlet of Smithtown Pines in the Town of Smithtown at 725 Veterans Memorial Highway. The expansive complex includes the County's Legislature, as well as Civil Service, Labor and Police Departments. Private dwellings lie to the north and west of the Project Site and undeveloped parkland to the east. The Project Site borders NY 347/454 to the south and Old Willets Path to the west.



Site Layout

The current site design of 500kW AC is composed of two project areas that totals 53,000 square feet of parking area and provides shade to approximately 600 parking spaces. In total the project area has two distinct parking sections that total 9 solar arrays.

Technical Components

The 500kW AC the North County Complex project site is expected to be the smallest project site of the seven ELI Solar Project sites. Once constructed the project could have up to 3,400 Suntech 270watt solar modules, one 500kW inverter and up-to 200 lineal feet of electrical trenching.

Interconnection

The North County Complex will require one point of point of common coupling to LIPA's existing 13.8 kV distribution system. The PCC will be located on the southwest parking area at the south side of the center array. From the PCC an underground electrical line will run directly south to Veteran's Memorial Highway to tie into LIPA's distribution network.

Figure 2.4-1g
S-7:

North County Complex

Geographical Location:
225 Veterans Memorial Hwy
Smithtown, New York

Site Characteristics

Layout Type: Campus
AC System Size: 0.500 MW
DC System Size: 0.926 MW
Module: Suntech 270
Module Count: 3,481
Inverter: 1 - 500 kW
0 - 250 kW
Transformer: 180

Legend

- Center of Solar Panel Array (See Key)
- Center of Solar Panel (Rectangular Key)
- Center of Solar Panel (Square/Double Key)
- Construction Materials & Structures (See Key)
- Land Use
- Transmission Lines (See Key)
- Power or Control Cabinet
- Inverter, Power Transformer
- Substation
- Electric Utility Service
- Perimeter Utility Service
- Fire Access Point

Scale: 1" = 170'

Based on Current Aerial Imagery

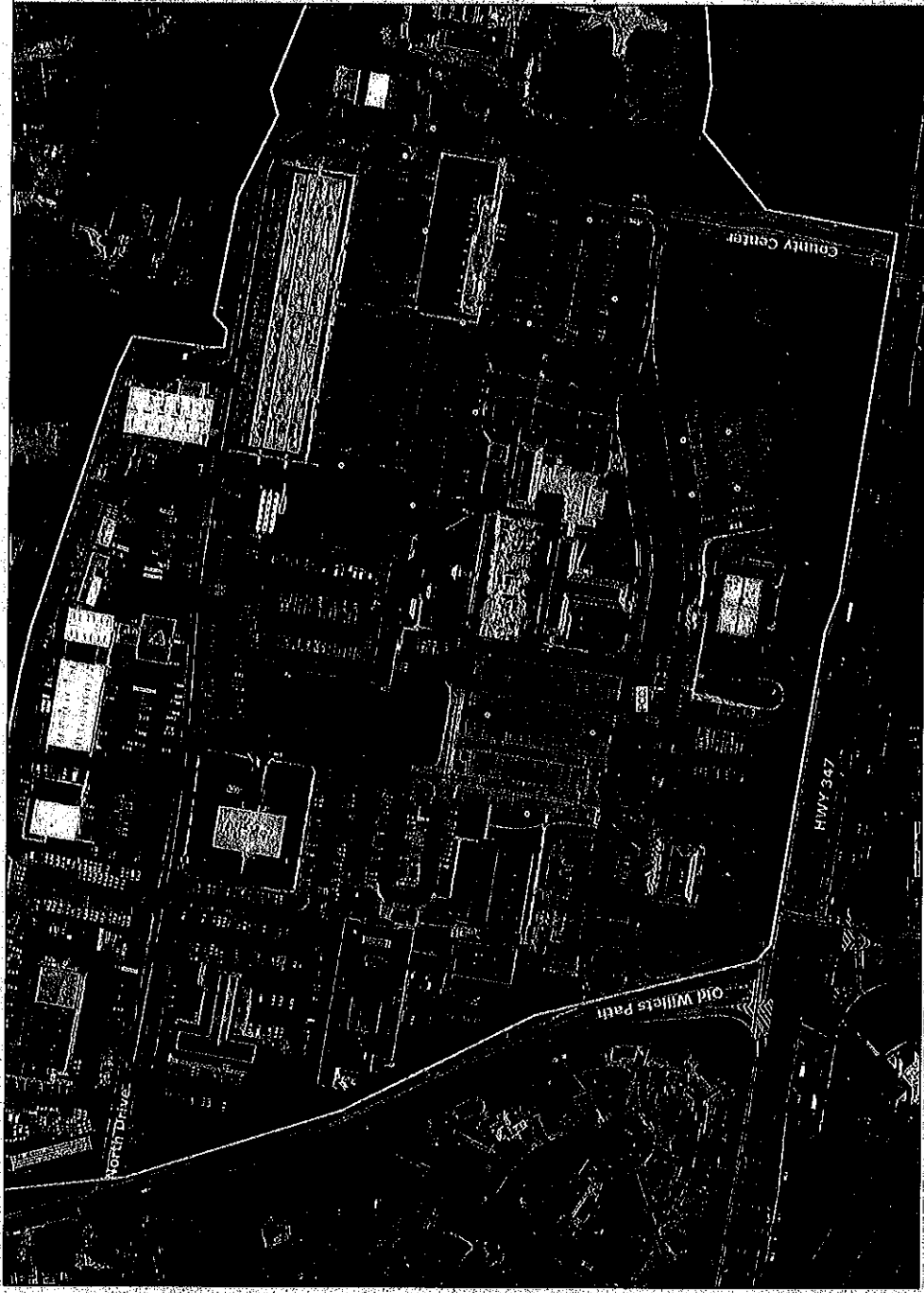


EXHIBIT D
FORM OF LETTER OF CREDIT/BOND

Date: _____
Bank Ref.: _____
Amount: US\$ _____
Expiry Date: _____

[Beneficiary Name]
[Beneficiary Address]
[City, State ZIP]

Re: [Project and Agreement]

By the order of our client, enXco Development Corporation ("**Applicant**"), 700 La Terraza Boulevard, #200, Escondido, CA 92025, and for the account of EDF Energies Nouvelles ("**Account Party**"), we, [NAME OF ISSUING BANK] ("**Issuer**"), hereby issue our Irrevocable Letter of Credit No. _____ in favor of [Beneficiary Name] ("**Beneficiary**"), [Beneficiary Address] [City, State ZIP], for an amount not to exceed USD _____ Dollars (\$____), pursuant to that certain [Name of Agreement giving rise to LOC obligation]ii _____ ("**Agreement**"), between Applicant and Beneficiary. This Letter of Credit shall become effective on [date] and shall expire no later than [Expiration Date].

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. ____ accompanied by your statement signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [specify place of presentation of documents]. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds. Partial draws are permitted under this Letter of Credit.

This Irrevocable Letter of Credit is transferable by Beneficiary in its entirety, but not in part, against the presentation of transfer instructions in the form attached hereto as Exhibit B. Issuer shall effect such a transfer only upon receipt of the original Letter of Credit and any amendment(s) thereto. Upon such presentation, Issuer shall forthwith transfer this Letter of Credit to the transferee by issuing an irrevocable Letter of Credit to such transferee with provisions substantially identical to those contained in this Letter of Credit No. _____, including the provisions for transfer set forth in this paragraph.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credit (2007 Revision) International Chamber of Commerce Publication No. 600 (the "**UCP**"),

except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*specify address*], referring specifically to Issuer's Letter of Credit No. _____. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*specify telephone number*] and have this Letter of Credit available.

[SIGNATURE PAGE FOLLOWS]

[Name of Issuer]

By: _____

Name:

Title:

EXHIBIT E
INTENTIONALLY OMITTED

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.

North County Complex

- 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)<<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:

North County Complex

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

LA0010

Riverhead County Center Ground Lease 2-22-10

LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

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

Premises: Part of the Property known as Riverhead County Center

Riverhead, New York

Date: February 26, 2010

TABLE OF CONTENTS

	<u>Page</u>
Section 1: Definitions	1
Section 2: Purpose	5
Section 3: Description	6
Section 4: Term	7
Section 5: Payments to County	7
Section 6: Late Charges	8
Section 7: Lessee's Duties and Obligations	8
Section 8: Prevailing Wage	11
Section 9: Other Construction By Lessee	12
Section 10: Requirements of Governmental Agencies	12
Section 11: Liens	13
Section 12: Waiver of Nuisance	13
Section 13: Temporary Storage	13
Section 14: Insurance	14
Section 15: Indemnity and Defense	16
Section 16: Removal and Restoration	17
Section 17: Ownership Attributes	18
Section 18: Hazardous Substances and Waste	18
Section 19: Signs	19
Section 20: Quiet Enjoyment	19
Section 21: Representations, Warranties and Covenants	19
Section 22: Confidentiality	20
Section 23: Successors and Assigns	20
Section 24: Leasehold Financing	21
Section 25: Condemnation	23
Section 26: Additional Fees and Charges	23
Section 27: Termination/Default Remedies and Damages	23
Section 28: Force Majeure	26
Section 29: Notices	27
Section 30: Broker	27
Section 31: Paragraph Headings	27

Section 32:	Legislative Approval	27
Section 33:	Waiver of Jury Trial	27
Section 34:	Off-set of Arrears or Default	28
Section 35:	Cooperation on Claims	28
Section 36:	Intentionally Omitted	28
Section 37:	Local Preference	28
Section 38:	Not a Co-Partnership or Joint Venture	29
Section 39:	Independent Contractor	29
Section 40:	County Representatives	29
Section 41:	No Credit	29
Section 42:	No Implied Waiver	29
Section 43:	Certification	29
Section 44:	Conflicts of Interest	30
Section 45:	Lawful Hiring of Employees Law in Connection with Contracts for Construction or Future Construction	30
Section 46:	Suffolk County Legislative Requirements	30
Section 47:	Governing Law	30
Section 48:	Severability	30
Section 49:	Interpretations	31
Section 50:	Memorandum	31
Section 51:	Execution in Counterparts	31
Section 52:	Entire Agreement	31
	Signature Page	32

EXHIBITS

- Exhibit A – Descriptions of Property
- Exhibit B – Cash Flow Payments
- Exhibit C – Approved Site Plan
- Exhibit D – Form of Surety Bond
- Exhibit E – Liens and Encumbrances
- Exhibit F – Legislative Requirements
- Exhibit G – Form of Memorandum of Agreement

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), made as of March 22 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 last date of execution of this Agreement.

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

"**Control**" and the terms "controlled by" and "under common control with" mean (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, or (ii) the ownership, either directly or indirectly, of at least 51% of the voting stock or other equity or ownership interest of such Person.

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: means 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: means 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",

Riverhead

“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: means 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 first 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.

Person: means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization, general partnership, limited liability company or government or any agency or political subdivision thereof or other entity;

PILOTS: means payments in lieu of taxes.

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

Pre-Operating Annual Payments: means \$ 6,906.87 per annum.

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

Principal: when used with respect to any Person, means the chief executive officer, the chief financial officer, the chief operating officer or the chairperson of such Person or a Person that directly or indirectly through one of more intermediaries controls such Person.

Prohibited Person: means (i) any Person (A) that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County unless such default or breach has been waived in writing by the County, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable notice and grace period, of its obligations under any written agreement with the County, unless such default or breach has been waived in writing by the County, or (ii) any Person (A) that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure, or (B) that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.

Property: means the County property a portion of which is the subject of this Agreement, described in *Section 3.01*.

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. 28-2010 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. 28-2010 of the Suffolk County Legislature, dated the 4th day of February, 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 Premises 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 the 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 the 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 Premises 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 0900-137.00-01.00-027.000, located at 200-210 Center Avenue, Riverhead, and further identified as Riverhead County Center, Riverhead, New York (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 any buildings, structures, improvements, additions, and permanent installations constructed and installed or to be constructed and installed therein, thereon, or there under pursuant to the terms 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 Premises 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 the County shall not be liable for any latent or patent defect thereon. Lessee may use the Premises 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 Premises 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 the 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 until the Operations Date.

Section 5.02 Commencing with the Operations Date, Lessee shall make quarterly payments to the 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, no later than 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

Riverhead

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 by the Parties in writing, which amount shall in no event exceed actual expenses incurred by the County for the installation/relocation of security cameras.

Section 5.05 Nothing contained in this **Section 5** shall affect the survival of the obligations of Lessee as set forth in this Agreement.

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 the County at the County's address set forth herein or at such other place as the 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% per month 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 under this Agreement, the County shall have no liabilities or obligations of any kind to any contractors or subcontractors engaged by Lessee or for any other matter in connection with the construction of the Improvements. Lessee shall protect, indemnify, and hold harmless the County, its agents, servants, officials, and employees from and against all liabilities, fine, penalties, actions, damages, claims, demands, judgments, losses, suits or actions, costs, and expenses caused by the negligence, or any acts or omissions of Lessee's contractors or subcontractors, including reimbursement of the cost of reasonable attorneys' fees and other professional fees, incurred by the County, its officers, agents servants, representatives, and employees in any action or proceeding arising or alleged to arise out of, or in connection with construction associated with the Improvements, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

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. The construction schedule shall provide for the completion of all Improvements within twelve (12) months of the receipt of building permits.

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 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 the 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. The County shall not levy any personal property taxes, special assessments or real property taxes on the Solar Energy System during the Term.

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 The County understands that the point of connection to LIPA's utility system shall be

Riverhead

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 or County's employees, agents or representatives, 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 I written report to the Department, setting forth the findings of such survey and delineating any remedial actions to be taken within forty-five (45) Days of its receipt of such survey.

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. Lessee shall have no obligation for the routine maintenance of the lighting or the electrical charges attributable to the operation of the lighting.

Section 7.18 Lessee understands that the Property may be located in high wind region of New York State. All designs shall be prepared with a reasonable degree of certainty to 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

Regardless of whether the construction of the Improvements is deemed a public works project for purposes of determining applicability of Section 220 of the Labor Law, 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 the 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

Riverhead

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, the County may cancel or discharge the same and upon the 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 the 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 thereunder 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, and such endorsement shall not limit, vary, change, or affect the protections afforded the County thereunder 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 thereunder with respect to any claim or action against the County by Lessee shall be the same as the protections afforded Lessee thereunder 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 the 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 the 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 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 agrees not to act unreasonably hereunder in rendering a determination that the policies and/or carriers are unsatisfactory. 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 and Defense

Section 15.01 Lessee shall protect, indemnify and hold harmless the County, its officers, officials, employees, agents, servants, contractors, and representatives, from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, 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 or the Premises under this Agreement, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with the Lessee's use of the Property or the Premises, except for claims, liabilities and damages arising out of the County's or County's employees', agents' or representatives' negligence or willful misconduct.

Section 15.02 Lessee hereby represents and warrants that Lessee shall not infringe upon any copyright work or material in accordance with the Federal Copyright Act in connections with Lessee's use of the Property or Premises during the term of this Agreement. Lessee shall protect, indemnify, and hold harmless the County and its officers, officials, employees, contractors, agents, servants, representatives, and other persons from and against all liabilities, fines, penalties, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions arising out of or in connection with any claim asserted for infringement of copyright, including reimbursement for the cost of reasonable attorneys' fees incurred by the County in any action or proceeding arising out of or in connection with any claim asserted for infringement of copyright.

Section 15.03 Lessee shall defend the County and its officers, officials, employees, agents, servants, contractors, representatives, and other persons in any suit, including appeals, arising out of, or connection with the Lessee's use of the Property or Premises or any copyright infringement proceeding or action. At the County's option, the County may defend any such proceeding or action and require Lessee to pay reasonable attorney's fees incurred by the County for the defense.

Section 15.04 For any claim for which Lessee shall be required to indemnify or defend the County, its officers, officials, employees, agents, servants, contractors, or representatives, 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 or settlement of the claim on the County's behalf.

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 abandon all or any part of the Improvements, the Improvements may be retained by the County as its property or may be stored or disposed of as the County may see fit. If the Improvements not so removed shall be sold, the County may receive and retain the proceeds of such sale and apply the same, at the County's option, against the reasonable expenses of the sale, moving and storage, payment arrears, and any damages to which the County may be entitled. Any excess proceeds from such sale shall be the property of the County. 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* which are not otherwise recovered by the sale of the property.

Section 16.02 In the event the County requires a decommissioning surety, the County shall give Lessee written notice no earlier than nine (9) year(s) from the Effective Date to require Lessee to provide the County with a bond or one or more letters of credit with the 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, the 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 the County. In the event the County is not in agreement with Lessee's estimate, the 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, the County may request that Lessee provide the County with information and documentation to confirm the existence and maintenance of such security in favor of the 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 the County the reasonable fees incurred by the 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 the 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.

Riverhead

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 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.* The 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

Section 23.01 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 sublet the Premises or any part thereof, by operation of law or otherwise. Except as otherwise provided in **Section 24** below, Lessee shall not assign the Agreement or any portion thereof without the prior written consent of the County in each instance, which consent shall not be unreasonably withheld, conditioned or delayed. In the event a request to assign is made by Lessee, considerations which may be taken into account by the County include, but are not limited to: (i) the financial capacity of the proposed assignee in relation to the Agreement obligations, with sufficient, reasonably detailed financial information to make a judgment; (ii) the experience of the proposed assignee in the ownership and operation of similar assets as those referenced under this Agreement; and (iii) the general business reputation of the proposed assignee and whether the proposed assignee or any Principal thereof is a Prohibited Person. The proposed assignee shall submit to the County all forms set forth on **Exhibit F** to this Agreement that are required to be submitted pursuant to applicable Legislative Requirements. The County shall grant or deny any request by Lessee to assign this Agreement within twenty (20) days after delivery to the County of Lessee's written request, setting forth the identity of the proposed assignee, its Principals, financials, and such other information described hereunder which will assist the County in making its decision.

Section 23.02 Any attempt by Lessee to assign this Agreement or a portion thereof without the County's prior written consent 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 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 unconditionally assume all of Lessee's obligations under this Agreement in writing, pursuant to a written assignment and assumption agreement. Each assignment and assumption shall be in writing, and Lessee shall deliver to the County a fully-executed original of such assignment and assumption 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**" under this **Section 24**) 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 thirty (30) Days of the Solar Energy Estate being encumbered, such notice to include the name and address of the Lender and verification of recording data, and the County is given written notice of each amendment or other modification or supplement to the related instruments.

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

- (a) The County will not amend or modify, or take any action causing, consenting to or accepting an 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 without the prior written consent of such Lender.
- (b) Lenders 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. Notwithstanding this right, each Lender shall notify the County in writing as soon as practicable that it will or has performed an act on behalf of the Obligor.
- (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 Obligor 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. If the County shall become entitled to terminate this Agreement due to an uncured Event of Default, as defined in *Section 27.03*, by Obligor, the County will not terminate this Agreement unless it has first provided a Notice to Default to each Registered Lender, giving each Registered Lender at least thirty (30) Days after the expiration of the cure period which this Agreement provides to Obligor under *Section 27.01* to cure the Event of Default itself. If within such thirty (30) Day period subsequent to the expiration of the cure period a Registered Lender notifies the County in writing 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, as defined in *Section 27.03*, 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 the Registered Lender does not cure the Event of Default, or the Registered Lender does not exercise due diligence to foreclose or acquire Obligor's interest under this Agreement and to perform or cause to be all of the covenants and agreements to be performed and observed by Obligor, the County may terminate this Agreement. 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 under this Agreement and the Improvements.

- (d) Subject to the provisions of paragraph (e) below, the County shall, upon written request of the Registered Lender made within forty (40) Days after notice to such Registered Lender, enter into a new lease agreement with such Registered Lender 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, and shall be 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 under this Agreement, (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) If more than one Registered Lender shall request a new lease agreement pursuant to paragraph (d) above, the County shall enter into such new lease agreement with the Lender whose mortgage is prior in lien. The County, without liability to Obligor or any Lender with an adverse claim, may rely upon a title insurance policy issued by a responsible title insurance company doing business in the county where the Premises are located naming the County and the lessee under such new lease agreement as insureds (and paid for by such lessee), as the basis for determining the appropriate Lender who is entitled to such new lease agreement.
- (f) 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 payments and other charges payable by Lessee continue to be paid in accordance with the terms of this Agreement.
- (g) The time available to a 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 Lender's reasonable control. 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.

- (h) Upon the request of a Registered Lender, the County and Obligor 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 payments hereunder or otherwise in any material respect adversely affect any rights of the County under this Agreement.

Section 25. Condemnation

Notwithstanding Section 24 above, 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 any one or more of the conditions or agreements contained in this Agreement, or as a result of an act or omissions or negligence 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 payments set forth in Sections 5 and 6. In no event shall this Section 26 be construed as a limitation of the County's rights to contribution or indemnification under the New York Civil Procedure Laws and Rules.

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 or the Property.

Section 27.02 Lessee may choose to terminate this Agreement by providing at least 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 **Sections 5 or 6** 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 Notice of Default 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 the Notice of Default and continues diligently such substantial performance without interruption except for causes beyond its control); or
- (3) Subject to the provisions of *Section 24.02(f)*, 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) Subject to the provisions of *Section 24.02(f)*, 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), and (6) above are collectively referred to herein as a "Non-Monetary Event of Default."

Section 27.04 Subject to the provisions of **Section 24**, 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 Premises. Such termination to be effective on the date specified in the a notice of termination ("Notice of Termination"), which date shall not be less than thirty (30) Days from the date of the notice ("Termination Date"), in the event Lessee has not cured the default. In such case, Lessee's rights to the possession of the Premises 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, 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), the County shall not be entitled to terminate this Agreement or evict Lessee from the Premises 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 efforts by the County to cure such 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 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 **Sections 16** and **24**, and subject to the limitations set forth in *Section 27.05* above, following the date specified in the Notice of Termination 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, the County may receive and retain the proceeds of such sale, which shall be the property of the County.

Section 27.08 Subject to the limitations set forth in *Section 27.05* above, 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 the 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 27.09 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. The 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 the County to recover any payments then owing by Lessee which are not paid in full.

Section 27.10 Except for the monetary obligations of Lessee, the 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 27.11 In the event the 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 the 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 27.12 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 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 27.13* 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 the County, to the Department, Attn: Commissioner, at the Department's address first above set forth; or, (c) at such other address as Lessee or the 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 the 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 the County, to the Department at the Department's 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 the 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

Riverhead

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) to the extent permitted under this Agreement, to 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 Party so requested shall: enter into any reasonable amendment hereto (aa) to correct an error in this Agreement, or (bb) to amend the legal description attached hereto, including replacing said legal description with a revised description prepared or provided by Lessee's or the County'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. Local Preference

Lessee shall use commercially reasonable efforts to use building trades contractors and subcontractors located and doing business within Suffolk County or Nassau County. For purposes of this Agreement, 'located and doing business within Suffolk County or Nassau County' means (i) maintaining a place of business and staffed, operational office at an address within the geographical boundaries of Suffolk County or Nassau County for a period of at least one year, from which employees who perform services of the type Lessee will be contacting for are assigned, and (ii) maintaining during such period an active

Riverhead

field staff of such employees performing services within Suffolk or Nassau County. In no event shall this clause be deemed to create a third party benefit to any person or entity.

Section 38. 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 39. 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 40. 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 41. 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 42. 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 43. 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.

Riverhead

Section 44. Conflicts of Interest

Section 44.01 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 44.02 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 45. 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 46. 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)<<http://www.co.suffolk.ny.us>>. Click on "Laws of Suffolk County" under "Suffolk County Links."

Section 47. Governing Law

Section 47.01 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 47.02 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 48. 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 49. 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 50. 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 51. 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 52. Entire Agreement

Section 52.01 This Agreement consists of the following: **Sections 1 through 52** 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 52.02 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 -

Riverhead

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: [Signature]
Name: SCOTT NELSON
Title: Vice President, Development Operations
Date: 3-11-10

COUNTY OF SUFFOLK

By: [Signature]
Title: Deputy County Executive
Date: 3/22/10

**APPROVED BY:
DEPARTMENT OF ENVIRONMENT AND
ENERGY**

By: [Signature]
Name: Carrie Meek-Gallagher
Title: Commissioner
Date: 3/1/10

**APPROVED BY:
DEPARTMENT OF PUBLIC WORKS**

By: [Signature]
Name: Gilbert Anderson
Title: Commissioner
Date: 3/1/10

**APPROVED AS TO LEGALITY
CHRISTINE MALAFI**

Suffolk County Attorney

By: [Signature]
Basia Deon Braddish
Asst. County Attorney
Date: 2/26/10

ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the 22nd day of March in the year 2010 before me, the undersigned, personally appeared Christopher E. Kent [name], Chief Deputy County Exec. [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

SUSAN A LIENAU
NOTARY PUBLIC-STATE OF NEW YORK
No. 01116148903
Qualified in Suffolk County
My Commission Expires July 03, 2010

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

Riverhead

STATE OF CALIFORNIA

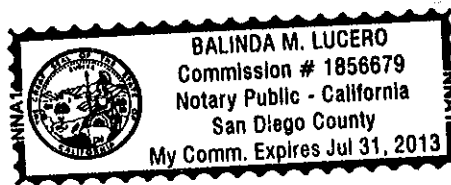
COUNTY OF San Diego)
) ss.

On March 11, 2010, before me, Balinda M. Lucero, a Notary Public, personally appeared Scott Nelson, 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.

Balinda M. Lucero
Notary's Signature



[Notary Seal]

EXHIBIT A
DESCRIPTION OF PROPERTY

Legal Description of Property

That certain real property located at 200-210 Center Avenue in the Town of Southampton, County of Suffolk, State of New York, more particularly described as:

Tax Map No. 0900-137.00-01.00-027.000

Parcel Acreage: 82.7

[A more precise legal description will be attached upon receipt of a preliminary title report and/or legal description prepared by surveyor.]

EXHIBIT B
CASH FLOW PAYMENTS

Cash Flow Estimate – Riverhead County Complex

Estimated Project Size: 2.8MWdc

Estimated Annual Operating Payment: \$ 69,069*

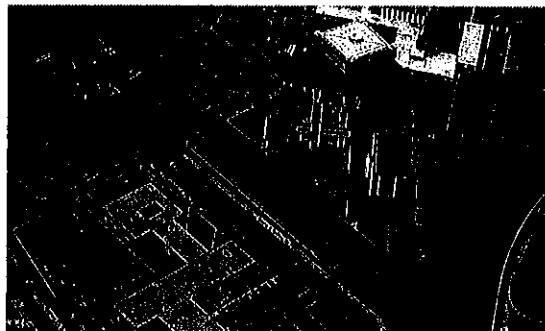
Estimated Quarterly Operating Payment: \$ 17,267*

*The parties acknowledge and agree that the above 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 this 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 the Agreement to specify the Quarterly Operating Payments payable by Lessee under this Agreement based upon the following formula: $\text{Actual Project Size} \times \$ 25,063 \text{ (Amount per MWdc)} = \text{Annual Operating Payment} / 4 = \text{Quarterly Operating Payment}$

EXHIBIT C
APPROVED SITE PLAN

Location

The Riverhead Complex project site is located within the Town of Southampton at 200 Center Drive, Riverhead, NY at the Suffolk County's Evan A. Griffing Complex. The property is bounded to the north by NY 24/CR 84 – Center Drive North, followed by the Peconic River and the Town of Riverhead; to the east by CR 51 – Center Drive South.



Site Layout

The current site design of 3MW AC is composed of two project areas that approximately total 316,000 square feet of parking area and provide shading to approximately 1,598 parking spaces. The first project area is approximately 750kW AC and composed of 9 solar arrays located in the North West corner of the Evan A. Griffing Complex inside the parking lot of the county's Jail and Sheriff's Office Complex utilizing large parking lots on the North West and North East parks of the county's jail. The second project area occupies the remainder of the multi-use County Complex and is composed of 22 solar arrays totaling roughly 2.250MW AC of solar power.

Technical Components

The 3MW AC the Riverhead Complex project site is expected to be the third largest project site of the Eastern Long Island Solar Project. Once constructed the project could have up to 11,100 Suntech 270watt solar modules, six 500kW inverters and up-to 2,660 lineal feet of trenching on previously disturbed areas.

Interconnection

Interconnection

The Riverhead Complex project site will require two Points of Common Coupling (interconnection) to the LIPA network. These two Points of Common Coupling (PCC) will be connected to LIPA's existing 13.8 kV distribution system via PCC #1, which will be located in the northwest corner of the project site that will have an overhead cable lines approximately 400 feet from the existing PCC#1 transformer that extends to LIPA's 13.8kV overhead line that runs through on a right of way through the south portion of the Suffolk County Riverhead Complex. PCC #2 will be located on the southern edge of the Riverhead Complex and will have an underground cable, approximately 450 feet, that will tie into LIPA's distribution network.

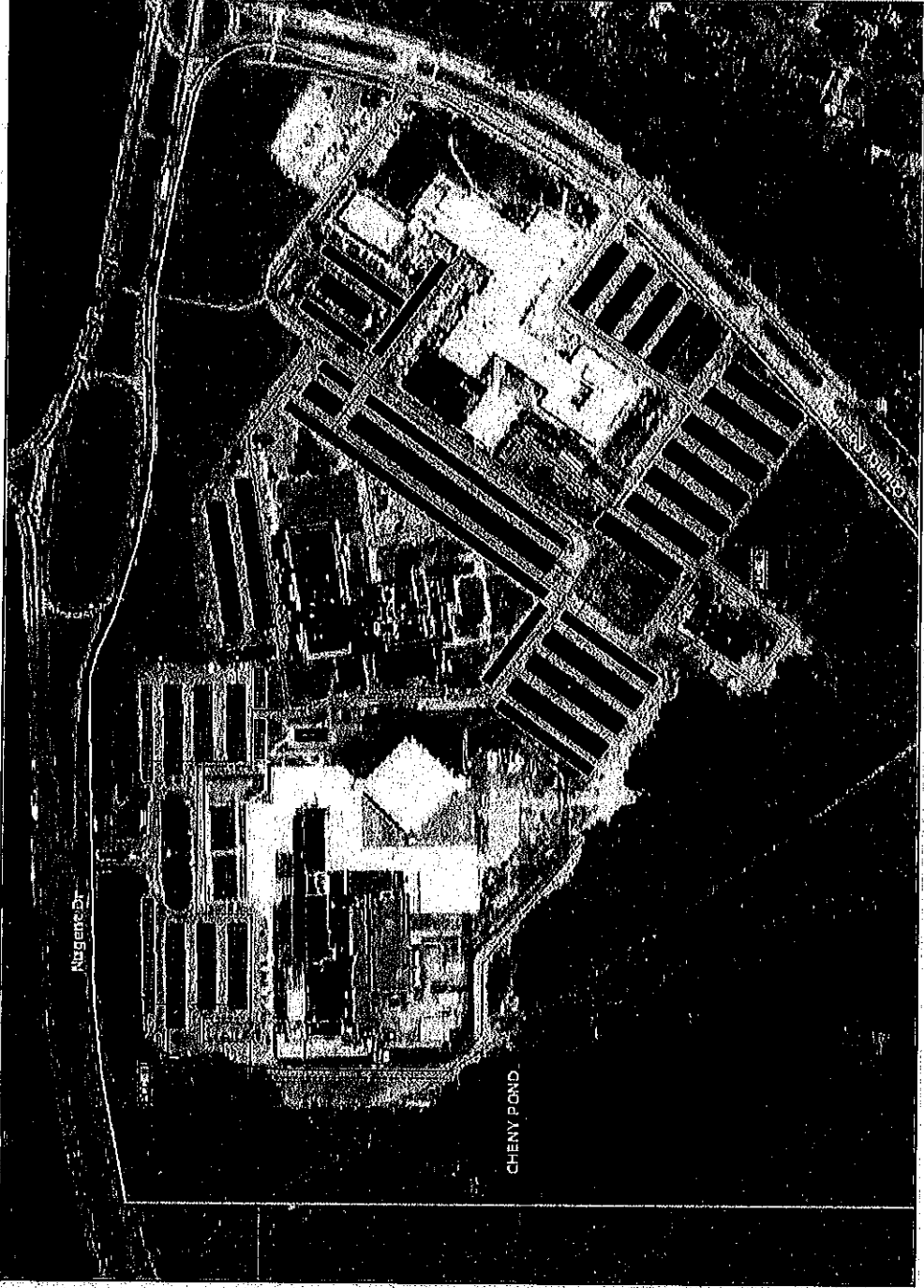
Figure 2.4-1a
S-1:
Riverhead County
Center Complex
Conceptual Layout

200-210 Center Drive
Riverhead, New York
Site Characteristics

Layout Type: Carport
 AC System Size: 3,082 kW
 DC System Size: 3,082 kW
 Module: Suntech 270
 Module Count: 11,356
 Inverter: 6 - 500 kW
 Inverter Count: 6
 Transformer: TBD

Legend

	Carport
	AC System
	DC System
	Module
	Inverter
	Transformer
	Access Road
	Utility Line
	Easement
	Property Boundary
	Right of Way
	Road
	Water Body
	Forest
	Field
	Wetland
	Contour Line
	Spot Elevation
	North Arrow
	Scale: 1" = 200'



Riverhead

EXHIBIT D
FORM OF LETTER OF CREDIT/BOND

EXHIBIT D
FORM OF LETTER OF CREDIT/BOND

Date: _____
Bank Ref.: _____
Amount: US\$ _____
Expiry Date: _____

[Beneficiary
[Beneficiary
[City, State ZIP]

[Name]
[Address]

Re: [Project and Agreement]

By the order of our client, enXco Development Corporation (“**Applicant**”), 700 La Terraza Boulevard, #200, Escondido, CA 92025, and for the account of EDF Energies Nouvelles (“**Account Party**”), we, [NAME OF ISSUING BANK] (“**Issuer**”), hereby issue our Irrevocable Letter of Credit No. _____ in favor of [Beneficiary Name] (“**Beneficiary**”), [Beneficiary Address] [City, State ZIP], for an amount not to exceed USD _____ Dollars (\$_____), pursuant to that certain [Name of Agreement giving rise to LOC obligation]|| _____ (“**Agreement**”), between Applicant and Beneficiary. This Letter of Credit shall become effective on [date] and shall expire no later than [Expiration Date].

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. ____ accompanied by your statement signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [specify place of presentation of documents]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds. Partial draws are permitted under this Letter of Credit.

This Irrevocable Letter of Credit is transferable by Beneficiary in its entirety, but not in part, against the presentation of transfer instructions in the form attached hereto as Exhibit B. Issuer shall effect such a transfer only upon receipt of the original Letter of Credit and any amendment(s) thereto. Upon such presentation, Issuer shall forthwith transfer this Letter of Credit to the transferee by issuing an irrevocable Letter of Credit to such transferee with provisions substantially identical to those contained in this Letter of Credit No. _____, including the provisions for transfer set forth in this paragraph.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credit (2007 Revision) International Chamber of Commerce Publication No. 600 (the “**UCP**”),

except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*specify address*], referring specifically to Issuer's Letter of Credit No. _____. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [*specify telephone number*] and have this Letter of Credit available.

[SIGNATURE PAGE FOLLOWS]

[Name of Issuer]

By: _____

Name:

Title:

EXHIBIT E
INTENTIONALLY OMITTED

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)<<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.

Riverhead

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:

Riverhead

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

Header 1

General Information

Extended Description Document Information

<p>Document Name: <input type="text"/></p> <p>Record Date: 11/07/2019 <input type="button" value="Calendar"/></p> <p>Budget FY: <input type="text"/></p> <p>Fiscal Year: <input type="text"/></p> <p>Period: <input type="text"/></p> <p>Document Description: TERRAFORM POWER 2019 SL NOV <input type="button" value="Up"/> <input type="button" value="Down"/></p> <p>Document Total: \$0.00</p> <p>Actual Amount: \$80,326.84</p> <p>Closed Amount: \$0.00</p> <p>Closed Date: <input type="text"/></p> <p>Original Amount: \$80,326.84</p> <p>Total Currency: \$0.00</p> <p>Total Coin: <input type="text"/></p> <p>Total Cash: \$0.00</p> <p>Total Check: \$0.00</p> <p>Total Credit/Debit: \$0.00</p>	<p>Bank Account: FA <input type="button" value="Up"/></p> <p>Cash Account: <input type="text"/></p> <p>Cash Account Sub: <input type="text"/></p> <p>Deposit Ticket: <input type="text"/></p> <p>Deposit Date: <input type="text"/> <input type="button" value="Calendar"/></p> <p>Bank Deposit Date: <input type="text"/> <input type="button" value="Calendar"/></p> <p>Date Transmitted for Reconciliation: <input type="text"/> <input type="button" value="Calendar"/></p> <p>Date Transmitted for Audit: <input type="text"/> <input type="button" value="Calendar"/></p> <p>Method of Deposit: <input type="text"/></p> <p>Deposit and Bank Category: <input type="text"/> <input type="button" value="Up"/></p> <p>Payment Type: Wire Transfer <input type="button" value="Down"/></p> <p>Misc. Identifier: <input type="text"/></p> <p>Mail Code: <input type="text"/></p> <p>Escrow ID: <input type="text"/> <input type="button" value="Up"/></p> <p>Number of Checks: 0</p> <p>Central Statement Customer: <input type="text"/> <input type="button" value="Up"/></p>
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Vendor	Total Lines: 1	Vendor Line: 1	Vendor Customer:	Legal Name:	<input type="button" value="Expand"/>
Accounting	Total Lines: 6	Accounting Line: 1	Line Amount: \$26,422.67		<input type="button" value="Expand"/>
Posting	Total Lines: 1	Posting Line: 1			<input type="button" value="Expand"/>