

SunEdison Land Lease
Gabreski Airport
9-9-14

Law # 36-ED-001

LEASE AGREEMENT

between

COUNTY OF SUFFOLK

and

SunEdison Origination1, LLC

Premises: Part of the Property known as Gabreski Airport

Westhampton Beach, New York

Date for Reference Purposes: May 1, 2014

Barcode
0030884

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LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease" or "Agreement"), made as of December 18, 2014 2014, 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 Economic Development and Planning (hereafter the "Department"), located at 100 Veterans Highway, 11th floor, Hauppauge, NY 11788 and its Division of Aviation, located at Francis S. Gabreski Airport Administration Building #1, Westhampton Beach, New York 11978 and SunEdison Origination1, LLC, a Delaware limited liability company, with an address at 12500 Baltimore Avenue, Beltsville, Maryland 20705 (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 Lease) 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.

Commencement Date: means the last date of execution of this Lease.

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 Lease.

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

FAA: means the Federal Aviation Administration.

Final Term: shall commence upon the expiration or earlier termination, as provided hereinafter, of the Primary Term and shall last no longer than six (6) months for the purpose of allowing for Lessee to decommission and remove the Solar Energy Facilities, unless extended per mutual written agreement of the Parties. If the Lease is extended, this this Final Term to allow for decommissioning and removal of the Solar Energy Facilities shall likewise be applicable.

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 Lease or from complying with all or a portion of the conditions under this Lease 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.

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

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

Initial Term: shall commence on the Effective Date and shall expire upon the Operation Date.

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, its successors and assignees.

Monetary Default: shall have the meaning set forth at *Section 25.03(1)*.

Non-Monetary Default: shall have the meaning set forth at *Section 25.03*.

Notice of Termination: shall have the meaning set forth at *Section 25.04*.

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.

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*.

Primary Term: shall commence upon the Operations Date and continue for twenty (20) years. The Parties agree to execute a memorandum confirming 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 Lease, described in *Section 3.01*.

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.

687-2014
and
1171-2014

Resolution: means Resolution No. 687-2014 of the Suffolk County Legislature.

Solar Energy Estate: means all or any portion of Lessee's right, title or interest under this Lease 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 include the Initial Term, Primary Term and Final Term.

Termination Date: means the date specified in the Notice of Termination upon which the Lease 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

687-2014 and
1171-2014

Section 2.01 The parties hereto acknowledge that the County is a municipal corporation and is entering into and executing this Lease by virtue of the authority of Resolution Nos. 687-2014 and 1171-2014 of the Suffolk County Legislature, ~~dated the day of September 2014,~~ 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. subject to prior County/Airport Approval, 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 Airport Manager or 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 Lease, whether accomplished by Lessee or a third party authorized by Lessee and approved by the County as otherwise required in this Lease, 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 Lease may be accomplished by Lessee or one or more third parties authorized by Lessee and approved by the County as otherwise required in this Lease, subject to Lessee's contracts with any third party/subcontractors acknowledging that the Premises is subject to a Lease with the County and the third party/subcontractor agreeing to comply with the Legislative Requirements therein.

Section 2.04 Notwithstanding Lessee's right to use the Premises, the County retains the right to continue to use the Premises for aviation and such other public purposes not inconsistent with Lessee's use. Lessee acknowledges that the Property is subject to certain covenants and restrictions regarding its use for aviation purposes and other public purposes. The Parties agree and acknowledge that Lessee's use of the Premises as contemplated herein will not interfere with the aviation uses at the Property. The County further reserves the right to grant easements in areas of the Premises for installation of utilities and to use the Premises for such other purposes consistent with aviation purposes, provided that such use or the grant of such easements does not unreasonably or materially interfere with Lessee's operation of the Solar Energy System and provided further that the County's access rights to the Premises are subject to *Section 11.03* hereof.

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 Lease, the County hereby agrees to lease to Lessee a portion of

property identified as Suffolk County Tax Map Numbers 0900-312.00-01.00-004.002, located at Gabreski Airport, Westhampton Beach, New York (the "Property"), in connection with the installation and operation of the Solar Energy System, 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 to be constructed and installed therein, thereon, or there under pursuant to the terms of this Lease (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, exclusive access to the Property 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 Lease. 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 Lease.

Section 4. Term

Section 4.01 The Term of this Lease shall begin on the Commencement Date and shall remain in effect until the the expiration of the Final Term (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 Lease shall end on the next Business Day).

Section 4.02 Hold Over: In the event Lessee shall continue to occupy the Premises beyond the Term without the County's written approval thereof, such holding over shall not constitute a renewal or extension of this Lease, but shall create a tenancy from month-to-month which may be terminated at any time by the County or Lessee by giving thirty (30) days written notice to the other party. Nothing in this Section 4 shall be deemed to modify Lessee's obligations under Section 16 of this Lease, relating to Lessee's obligation to repair and restore the Premises.

Section 5. Payments to County

Section 5.01 As consideration for County's leasing the Premises to Lessee, during the Initial Term, Lessee agrees to pay a non-refundable fee to the County in the amount of Fifty One Thousand Three Hundred Sixty Nine Dollars (\$51,369.00). This non-refundable fee shall be paid by Lessee within fifteen (15) days from the Effective Date of this Lease. In the event the Operations Date does not begin within twelve (12) months of issuance of building permits for the Solar Energy Facilities, Lessee agrees to pay Four Thousand Two Hundred Eighty Dollars (\$4,280) per month and any partial months shall be prorated. In the further event that Lessee does not achieve the Operations Date thirty-six (36) months after the Effective Date for any reason not excused due to Force Majeure or delay attributable to the County, the County shall be entitled to terminate this Lease in accordance with the provisions of *Section 28.04* and Lessee shall have no further right or interest in the Premises or the Property. Nothing in this *Section 5.01* shall be interpreted to modify any provisions of this Lease which survive termination of the Lease.

Section 5.02 Commencing on the Operations Date (the "Payment Commencement Date"), through the expiration of the Term, Lessee shall make quarterly payments to the County (the "Quarterly Operating Payments") in the amount of Forty-Six Thousand Five Hundred Fifty Dollars (\$46,500). 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 Payment Commencement 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. Likewise, if the expiration of the Final Term is not the last Day of a Calendar Quarter, the Quarterly Operating Payment for the portion of the last Calendar Quarter shall be prorated on a per diem basis.

Section 5.03 Lessee shall pay all Payments without set-off, abatement, deductions, defense or claims, except as specifically set forth herein, to the County at the Department's address first set forth above 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 5.04 In the event that Lessee's underlying power purchase agreement with LIPA provides for any escalation(s) or increases in the amount paid by LIPA for energy generated by the Solar Energy System constructed and operated under this agreement, the Quarterly Operating Payment due the County by Lessee pursuant to *Section 5.02* above shall be increased by the same percentage of the escalation or proportionate share of any other increase paid by LIPA to Lessee. In no event shall the Quarterly Operating Payment due the County be reduced.

Section 5.05 The use and occupancy of the Premises by Lessee will be without cost or expense to the County.

Section 6. Late Charges

Section 6.01 If Lessee should fail to pay any amount required to be paid by Lessee under this Lease 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 Lease, including without limitation the County's rights set forth in **Section 28** of this Lease or (ii) any obligations of Lessee under this Lease. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum, such late charge payable under this Lease 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 Lease and the Approved Site Plan. For purposes of this Lease, 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 B** and incorporated herein by this reference. An "Amended Approved Site Plan" may be substituted as **Exhibit B** 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 Lease, 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 to the Department no less than thirty (30) days prior to the commencement of construction. The construction schedule shall provide for the completion of all Improvements within twelve (12) months of the receipt of building permits. The construction period shall be extended by the Department if completion of the Improvements is delayed through no fault of the Lessee.

Section 7.04 Lessee shall prevent activities associated with the construction or installation of the Improvements at the Premises from interfering with the other businesses or airport operations at the Property. Lessee shall also be responsible for installation, maintenance, and removal of all utilities which may be necessary during construction and which may be necessary for the operation of the Solar Energy Facilities, and shall at all times keep the construction area surrounding area in a clean, orderly and safe condition free of accumulated construction debris, stock piles exceeding FAR Part 77 surfaces, blowing debris or dust, and waste materials.

Section 7.05 During the Term of this Lease, 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 Lease. 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. Lessee agrees to comply with any personnel badging and vehicle permitting which may be required pursuant to federal regulations of the Transportation Security Administration, the FAA and Department of Homeland and any costs which may be incurred in connection with complying therewith. If required, Lessee shall establish and maintain a secured (fenced) perimeter at its primary operations area and escort or provide escort for all vendors and suppliers requiring access to the Premises. Lessee shall confirm with the Airport Manager prior to the commencement of any work whether a secured perimeter is required.

Section 7.06 Lessee shall use commercially reasonable efforts to avoid interfering with the County's use of the Property outside of the Premises. No trees, vegetation or brush shall be trimmed, cut down and cleared, or otherwise destroyed now or hereafter on the Property not included as part of the Premises unless first approved by the Airport Manager, in writing, provided that the County shall cooperate in efforts pursuant to *Section 22.01* hereof to minimize shading on the Solar Energy Facilities.

Section 7.07 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. Lessee shall also provide and maintain obstruction lights and all similar equipment or devices now or at any time required by any applicable law, ordinance or municipal, state or federal regulation.

Section 7.08 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 Lease, 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 Lease, 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 Lease 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 7.09 This Lease 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. To the extent that Lessee requires any easements or rights-of-way in order to develop, construct, install, operate, maintain and repair the Solar Energy System or for any other purposes set forth under this Lease, the County will cooperate and assist Lessee, as necessary, to obtain such easements and rights-of-way on County property.

Section 7.10 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; provided, however, that all aviation uses and operations and other existing uses at the facility shall be permitted.

Section 7.11 Lessee shall pay any personal property taxes, special assessments, PILOTs, or other imposition that may be levied or assessed on the Premises or Improvements (or any taxes that are directly attributable to the Improvements) due to Lessee's occupancy and use of the Premises. 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 7.12 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 7.13 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 and approval prior to installation of any Improvements.

Section 7.14 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 damaged in the course of its construction activities and/or in connection with any activities authorized under this Lease.

Section 7.15 The County understands that the point of connection to LIPA's utility system may be located on County property not included within the Premises under this Lease. Lessee agrees that it shall not install any equipment and appurtenances to deliver energy to LIPA unless prior written approval for the use of such property is granted by the Department in writing and the proposed installation is consistent with the purposes of this Lease and the permitted uses of the Property, and as long as Lessee complies with all requirements of LIPA, the New York's Small Generator Interconnection Process, the County, and the FAA.

Section 7.16 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 airport and agrees to maintain the Improvements in a manner which minimizes nuisances and inconvenience to persons using the airport facilities including, but not limited to, nesting birds and water run-off.

Section 7.17 Lessee shall have a physical inspection of all Improvements conducted by a licensed electrician at least twice a year during the Term to ensure that the Improvements continue to maintain structural stability. Upon a written request by the County, Lessee will provide a written report to the Department, setting forth the findings of such maintenance inspections within forty-five (45) Days of the inspection and delineating any remedial actions to be taken.

Section 7.18 Lessee warrants and represents that any exterior lighting installed as part of Lessee's Installation shall be in compliance with the Dark Skies legislation enacted by the County of Suffolk by Resolution # 838-2004. In the event existing lighting located on the Property needs to be altered as part of Lessee's Installation, Lessee agrees to provide, at its sole cost and expense, alternate lighting satisfactory to the Department

Section 7.19 Lessee understands that the Property may be located in high wind region of New York State. All designs shall be prepared to meet applicable wind, seismic, and snow loading criteria.

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 7.21 The Parties agree to be bound by the terms of the "Airport Lease Requirements," annexed hereto as Exhibit C, and made a part hereof.

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 Lease, 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 Lease 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 Lease 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. Apprenticeship Training Program

Section 9.01 Lessee agrees that this Lease shall be subject to Article 23, Section 816b of the New York State Labor Law and Chapter 869 of the Suffolk County Code. Lessee agrees that, in connection with the construction and installation of the improvements, Lessee, Lessee's contractors, and all subcontractors shall participate in registered and approved apprentice training programs. Lessee and its contractors shall provide evidence of participation in approved apprentice training programs that are appropriate for the type and scope of work to be performed under this Lease.

Section 9.02 After execution of this Lease, and at least ten (10) working days prior to the commencement of any of Lessee's work performed pursuant to this Lease, Lessee and its contractors shall provide affidavits attesting to participation in the appropriate, approved apprentice training programs.

Section 9.03 Lessee or Lessee's contractor shall also submit an affidavit of participating in an approved apprentice-training program from each subcontractor performing any aspect of Lessee's work under this Lease. The County will provide affidavit forms.

Section 10. Other Construction by Lessee

Section 10.01 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 11. Requirements of Governmental Agencies

Section 11.01 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 11.02 Lessee understands that the Suffolk County Department of Public Works ("DPW") is the authority having jurisdiction with respect to Building Permits relating to construction on County property. All Improvements constructed by Lessee pursuant to this Lease shall be coordinated with DPW 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 11.03 Lessee agrees to comply with all reasonable requests for special inspections by DPW during construction including, but not limited to, concrete testing, and electrical inspections. During the Term of this Lease, the Department and/or DPW, or their authorized representatives, shall be permitted to enter the Premises at all reasonable times during

usual business hours, upon at least three (3) days' prior notice or, in the case of an emergency, such notice as is practicable, for the purposes of inspecting the Premises, provided that they follow any of Lessee's safety procedures. Lessee shall have the right to have its representative accompany the County personnel and/or its authorized representative during all or any part of such inspection. Lessee further agrees that, in the event of an emergency, the County or its representative, or the Air National Guard or its representative, shall have the right to access the Premises in connection with local emergency response efforts.

Section 12. 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 Lease. 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 sixty (60) 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 Lease 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 13. 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 14. Temporary Storage

Section 14.01 Temporary Storage Space During Installation. The County will use reasonable efforts to identify and provide sufficient area 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 by Lessee. 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 14.02 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 15. Insurance

Section 15.01 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:

- a. 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);
- b. 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
- c. 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 Lease, 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 Lease 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;
- d. 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.
- f. 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 15.02 All policies of insurance described in this **Section 15** shall:

- a. Be written as primary policies not contributing with and not in excess of coverage that County may carry;
- b. Lessee shall furnish to the County certificates of insurance for each such policy and upon request, a true and 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 an endorsement page evidencing the County's status as an additional insured on said policy;
- c. Expressly provide that the County shall have no liability for premiums;

- d. 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
- e. Lessee 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 certificates, policies and other evidence of insurance and notices shall be mailed to the Department at its address as set forth in this Lease or at such other address of which the County shall have given the Contractor notice in writing.

Section 15.03 In addition to the obligations set forth in this **Section 15**, and all other insurance required under this Lease, 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 15.04 In the event Lessee shall fail to provide the Declaration Pages or certificates of insurance or to maintain any insurance required by this Lease, the County may, but shall not be required to, obtain such policies and add the cost thereof to payments due the County under this Lease or any other agreement between the County and Lessee.

Section 15.05 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 15.06 Each policy of insurance required by this **Section 15** 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 15.07 If at any time any of the insurance policies shall cease to be available to Lessee, Lessee shall promptly obtain a new and satisfactory policy in replacement. 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 Lease.

Section 15.08 If the Improvements are damaged or suffer loss (other than ordinary wear and tear) due to any natural event including any act of God or of the elements such as fire, earthquake or other casualty, or due to any of Lessee's own negligence, Lessee, at its own cost and expense, shall either (a) proceed with all reasonable diligence and speed to obtain any necessary governmental permits for such repair or restoration and thereafter repair, replace, and restore the Improvements as nearly as possible to the same value, condition, and character as existed immediately prior to such damage or loss or (b) if Lessee elects not to repair, replace or restore the Improvements to their previous condition, Lessee will be discharged from responsibility to repair the damage, but, subject to the rights of any Leasehold Mortgagee pursuant to a Leasehold Mortgage, and less an amount equal to the cost of removing and restoring the Premises in accordance with **Section 17** of this Lease, the balance of such proceeds of insurance shall be apportioned between the County and Lessee, with the County receiving the same proportion of such proceeds as the then expired portion of the term of this Lease bears to the full term of this Lease.

Section 15.09 Lessee agrees that no liability shall attach to the County for any damages or losses incurred or claimed by Lessee or any other person or party on account of the construction, installation or operation of the Improvements or other improvement to or upon the Property made by Lessee.

Section 16. Indemnity and Defense

Section 16.01 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 Lease, 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 16.02 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 Lease. 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 16.03 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 16.04 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 17. Removal and Restoration

Section 17.01 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 such as buried electrical and communications lines. Underground structures, including concrete footings, materials, or other appurtenances which create an impediment to future renovation and/or development of the Premises must be removed and the Premises restored 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 ninety (90) Days following the expiration or earlier termination of this Lease. 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 Lease 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 17.01* which are not otherwise recovered by the sale of the property.

Section 17.02 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 Economic Development and Planning, 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 17.03 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 18. 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 19. Hazardous Substances and Waste

Section 19.01 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 Premises nor (ii) shall the

County use, store, dispose of or release on or to the Premises or (iii) cause or permit to exist or be used, stored, disposed of or released on or to the Premises 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 19.02 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 Lease, 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 19.03 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 Lease. Lessee's obligations and liabilities under this Section shall survive the expiration or earlier termination of this Lease.

Section 19.04 To the extent permitted by law, County shall indemnify, defend, and hold harmless Lessee from all fines, suits, procedures, claims and action of every kind, and all costs associated therewith (including attorney's and consultants' fees) with regard to any Hazardous Substances that (i) are existing at the Property prior to the Effective Date; or (ii) any release caused by the County after the Effective Date. County's obligations and liabilities under this Section shall survive the expiration or earlier termination of this Lease.

Section 20. 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 21. Quiet Enjoyment

The County agrees that Lessee shall quietly and peaceably hold, possess and enjoy the Premises pursuant to the terms of this Lease, and for the Term of this Lease 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 22. Representations, Warranties and Covenants

Section 22.01 The County shall take all reasonable action as necessary to prevent buildings, structures or fauna from shading the Solar Energy System or otherwise interfering with the direct solar radiation of the Solar Energy System. In the event requested by Lessee, and subject to *Section 7.05* hereof, the County shall grant such temporary or permanent easements, rights of way, or other rights or encumbrances, necessary or convenient across, over, under or through any property adjacent to the Premises owned or controlled by the County or any Affiliate to further the purposes of this *Section 22.01*.

Section 22.02 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 22.03 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 22.04 Each person executing this Lease 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 Lease, perform all of its obligations hereunder and grant the interests herein granted.

Section 22.05 Each person executing this Lease 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 Lease and perform all of its obligations hereunder.

Section 22.06 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 in **Schedule 22.06**. The County will not subject the Premises to any additional liens, encumbrances, covenants, conditions, easements after the Effective Date of this Lease without the prior written consent of the Lessee, which consent shall not be unreasonably withheld, conditioned or delayed.

Section 22.07 The County and Lessee agree to cooperate to provide Lessee with lawful and valid access to and from the Premises to existing public highways and roads, and sewer, electrical or other utility services, and all utilities which serve the Premises. All matters regarding access to and from the Premises shall be coordinated through the Airport Manager.

Section 22.08 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 17 and 28**, 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 17 and 28**.

Section 22.09 Lessee warrants that the execution and delivery of this Lease 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 Lease and to perform its obligations under this Lease. 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 Lease is a legal, valid, and binding obligation of the Lessee, enforceable against Lessee in accordance with its terms.

Section 23. 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 Lease be kept confidential will not be considered.

Section 24. Successors and Assigns

Section 24.01 This Lease 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 25** below, Lessee shall not assign the Lease 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 Lease 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 Lease; 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 E** to this Lease that are required to be submitted pursuant to applicable Legislative Requirements. The County shall grant or deny any request by Lessee to assign this Lease 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 24.02 Any attempt by Lessee to assign this Lease 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 Lease to (a) an "Affiliate," (b) a Lender in connection with any financing by Lessee of the Solar Energy System in accordance with **Section 25** 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 Lease, and (iii) agree to unconditionally assume all of Lessee's obligations under this Lease 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 25. Leasehold Financing

Section 25.01 Right to Encumber. Lessee or any authorized successor or assignee under **Section 24** (each, an "**Obligor**" under this **Section 25**) 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 25.02 Covenants for Lenders' Benefit. Should an Obligor assign, encumber, hypothecate, mortgage or pledge any of its interest as provided in *Section 25.01* 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 Lease 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 Lease, and any such act or thing performed by a Lender shall be as effective to prevent a default

under this Lease and/or a forfeiture of any of Obligor's rights under this Lease 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 25.02* 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 Lease due to an uncured Event of Default, as defined in *Section 28.03*, by Obligor, the County will not terminate this Lease 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 Lease provides to Obligor under *Section 28.01* 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 Lease in order to cure a Non-Monetary Event of Default, as defined in *Section 28.03*, the County shall not terminate this Lease 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 Lease 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 Lease 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 Lease. 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 Lease or any new lease entered into pursuant to *Section 25.02(d)* shall be to such Registered Lender's interest under this Lease 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 Lease, and shall be upon the same terms, covenants, conditions and agreements as contained in this Lease. 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 Lease, (ii) pay the County any and all amounts which would have been due under this Lease (had this Lease not been terminated) from the date of the termination of this Lease 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 Lease 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 Lease as long as all payments and other charges payable by Lessee continue to be paid in accordance with the terms of this Lease.

- 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 Lease to include any reasonable provision requested by such Registered Lender to implement the protective provisions contained in this Lease 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 Lease; provided, however, that the County shall not be required to amend this Lease 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 Lease.

Section 26. Condemnation

Should title or possession of all or any portion of the Premises be taken in condemnation proceedings by a government agency, governmental body or private party under the exercise of the right of eminent domain, or should a partial taking render the remaining portion of the Premises wholly unsuitable for Lessee's use, then this Lease 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 Lease 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 Lease to reflect such partial taking.

Section 27. 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 Lease, 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 Lease, 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 27 be construed as a limitation of the County's rights to contribution or indemnification under the New York Civil Procedure Laws and Rules.

Section 28. Termination/Default Remedies and Damages

Section 28.01. This Lease shall terminate at the end of the Term hereof and Lessee shall have no further right or interest in the Premises or the Property.

Section 28.02 Lessee may choose to terminate this Lease by providing written notice ("Lessee's Notice of Termination") to the County: (a) at any time and for any reason during the Primary Term with at least nine (9) months' advance written notice; (b) , at any time and for any reason during the Initial Term with at least ten (10) days' advance written notice; or (c) in the case of an extended Force Majeure which prevents Lessee from using the Solar Energy System over one hundred and eighty (180) consecutive days, upon thirty (30) days' advance written notice. All rights and obligations of the

parties hereunder shall terminate as of the termination date set forth in such Lessee's Notice of Termination (other than liabilities that accrued prior to such termination or which expressly survive the termination of this Lease).

Section 28.03 The following shall constitute an "Event of Default":

- a. Lessee shall fail duly and punctually to pay any installment under **Sections 5** or **6** of this Lease, 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
- b. Lessee shall fail to keep, perform, or observe any material term set forth in this Lease 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
- c. Subject to the provisions of *Section 25.02(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
- d. Subject to the provisions of *Section 25.02(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
- e. Subject to the provisions of *Section 25.02(f)*, 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
- f. Subject to the provisions of *Section 25.02(f)*, 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 (c), (d), (e), and (f) above are collectively referred to herein as a "Non-Monetary Event of Default."

Section 28.04 Subject to the provisions of **Section 25**, upon the occurrence of either a Monetary or a Non-Monetary Event of Default other than an Event of Default described in *Section 28.03(b)*, and after the applicable cure periods have elapsed, or at any time thereafter during the continuance thereof or during the term of this Lease, 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 Lease 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 28.05 Upon the occurrence of an Event of Default described in subsection (b) of *Section 28.03* (after the applicable cure periods have elapsed), the County shall provide any Leasehold Mortgagee and the trustee under any Leasehold Mortgage with Notice of Default and provide an additional thirty (30) day period within which the Leasehold Mortgagee shall have the right, but not the obligation, to cure such default. If Leasehold Mortgagee elects to cure, but cannot remedy the default completely within this additional thirty (3) day period, then the County shall give the Leasehold Mortgagee a reasonable extension of time so to do, provided that Leasehold Mortgagee continues to pursue such remedies with reasonable diligence. County agrees that, so long as Leasehold Mortgagee shall have the right to cure any default by Lessee under this Lease, as provided herein, County shall not take any action to terminate this Lease.

Section 28.06 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 28.07 Subject to the provisions of **Sections 17 and 25**, and subject to the limitations set forth in *Section 28.05* 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 28.08 Subject to the limitations set forth in *Section 28.05* 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 Lease. 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 28.09 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 Lease 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 28.10 Except for the monetary obligations of Lessee, the County and Lessee shall not be in default of this Lease 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 Lease.

Section 28.11 In the event the County shall fail to keep, perform, or observe any material term set forth in this Lease 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 28.12 Except as set forth in **Section 26** hereof, 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 28.12* are material conditions to the Parties entering into this Lease and shall survive the termination or expiration of this Lease.

Section 29. Force Majeure

Section 29.01 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 Lease 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 29.02 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 30. Notices

Section 30.01 Any communication, notice or other submission necessary or required to be made by the parties regarding this Lease 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 30.02 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 30.03 Notice shall be deemed to have been duly given (i) if delivered personally, upon delivery thereof on a Business Day or if not a Business Day, then the next succeeding Business Day, (ii) if by nationally recognized overnight courier, the first Business Day subsequent to transmittal and (iii) 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 31. Broker

Lessee and the County each represents and warrants that no broker has been concerned on its behalf in the negotiation of this Lease 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 Lease (to include reasonable attorneys and other professional fees).

Section 32. Paragraph Headings

The section and subsection headings, if any, in this Lease, 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 33. Legislative Approval

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

Section 34. 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 Lease, 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 35. Off-set of Arrears or Default

Lessee warrants that it is not, and shall not be, during the Term of this Lease, in arrears to the County for taxes or upon debt or contract and is not, and shall not be during the term of this Lease, 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 Lease.

Section 36. Cooperation on Claims

Section 36.01 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 Lease.

Section 36.02 The County shall fully support and cooperate with Lessee in the conduct of its operations and the exercise of its rights under this Lease including with Lessee's efforts to: (i) obtain from any Governmental Authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights; or (ii) to the extent permitted under this Lease, to assign or otherwise transfer all or any part of or interest under this Lease or obtain any financing in accordance with the provisions of this Lease, 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 Lease. 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 (a) to correct an error in this Lease, or (b) 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: (aa) execute and deliver to Lessee any owner's affidavit reasonably requested by any title company or Lessee; or (bb) 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 Lease at any administrative, judicial, legislative or other level.

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 Lease, '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 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 Lease 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 Lease.

Section 42. No Implied Waiver

No waiver shall be inferred from any failure or forbearance of either Party to enforce any provision of this Lease 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 Lease hereby certify that, other than the funds provided in this Lease and other valid Leases 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 Lease, and any partners, members, directors, or shareholders of five percent (5%) or more of any party to this Lease.

Section 44. Conflicts of Interest

Section 44.01 Lessee agrees that it will not, during the term of this Lease, 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 Lease. 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 Lease 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 E 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

Lessee agrees to be bound by the terms of the "Suffolk County Legislative Requirements," attached hereto as Exhibit E, and made a part hereof and to require compliance with same by its contractors and subcontractors engaged in work on the Premises. 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 Lease 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 Lease 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 Lease, or the application thereof to any person or circumstance, shall, to any extent, be held invalid or unenforceable, the remainder of this Lease, 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 Lease shall be valid and shall be enforced to the fullest extent permitted by law.

Section 49. Interpretation

Each Party has reviewed this Lease 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 Lease.

Section 50. Memorandum

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

Section 51. Execution in Counterparts

This Lease 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 Lease 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 Lease unless specified to the contrary.

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

SIGNATURE PAGE FOLLOWS

SunEdison Origination1, LLC

By: Marc Fioravanti
Name: MARC FIORAVANTI
Title: VICE PRESIDENT
Date: 1/6/15

COUNTY OF SUFFOLK

By: [Signature]
Name: Dennis M. Cohen
Title: Chief Deputy County Executive
Date: 4/27/2015

SunEdison Legal Dept.
Approved as to Form
Initials: MM
Date: 12/17/14

APPROVED BY:
DEPARTMENT OF ECONOMIC DEVELOPMENT
AND PLANNING

By: [Signature]
Name: Joanne Minieri
Title: Deputy County Executive/Commissioner
Date: 1/28/15

APPROVED AS TO FORM
Dennis M. Brown, County Attorney

By: [Signature]
Name: Basia Deren Braddish
Title: Asst. County Attorney, Municipal Law Bureau
Date: 4/22/2015

APPROVED BY:
DEPARTMENT OF PUBLIC WORKS

By: [Signature]
Name: Gilbert Anderson, P.E.
Title: Commissioner
Date: 1/28/15

Barcode
0030884

ACKNOWLEDGEMENT

Commonwealth of VA
~~STATE OF NEW YORK~~

SS:

COUNTY OF ~~SUFFOLK~~ *Arlington*

On the *6th* day of *January* in the year *2014* before me, the undersigned, personally appeared *Marc Fioravanti* [name], *Vice President* [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.



Juan A. Lopez
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7524851
My Commission Expires
May 31, 2016

Juan A. Lopez
Notary Public

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the *27th* day of *April* in the year *2015* before me, the undersigned, personally appeared *Dennis M. Cohen, Chief Deputy County Executive*, 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.

Vivian R. Keys
Notary Public

VIVIAN R. KEYS
NOTARY PUBLIC-STATE OF NEW YORK
No. 01KE6168764
Qualified in Suffolk County
My Commission Expires June 18, 2015

EXHIBIT A
DESCRIPTION OF PROPERTY

EXHIBIT B
APPROVED SITE PLAN

EXHIBIT C
AIRPORT LEASE REQUIREMENTS

Section 1. Non-Interference With Airport Operations

Lessee, by accepting this Lease, expressly agrees for itself, its successors and assigns, that it will not make use of the Premises in any manner which might interfere with the landing or taking off of aircraft at the Airport, or otherwise constitute a hazard. In the event the aforesaid covenant is breached, the County reserves the right to enter upon the premises and cause the abatement of such interference, at Lessee's sole expense.

Section 2. Field Use

Lessee does not lease, and is prohibited from using, any aircraft parking apron or taxiway. Nothing in this Section, however, shall prohibit Lessee from the joint use with others at the Airport of roadways serving the Premises in accordance with the Airport's rules, regulations and/or restrictions. No service equipment may be stored on the Leased Premises without prior written consent of the Airport Manager.

Section 3. Obstruction Lights

Section 3.01 Lessee shall furnish such obstruction lights as the County shall direct, of the type and design approved by the County in compliance with standards and specifications required by the FAA, and shall install said lights in the locations designated by the County and shall maintain them in good operating condition at all times.

Section 3.02 Lessee shall furnish and install the bulbs and furnish the electricity necessary for the operation of said lights, and shall operate the same in accordance with the directions of Airport Management. The County hereby directs that all said obstruction lights shall, until further notice, be operated daily for a period commencing thirty (30) minutes before sunset and ending thirty (30) minutes after sunrise and for such other periods as may be directed by the Control Tower of the Airport or Airport Management.

Section 4. Unauthorized Use

Except persons who have been granted valid permits or permission from the County, Lessee shall not permit, foster, or allow on the Premises any persons who are not employees or contractors/subcontractor without prior written approval from the County.

Section 5. Rules and Regulations, Minimum Standards and Development Guidelines

Lessee shall observe and obey and shall compel others on the Premises to observe and obey the "Airport Rules and Regulations" as are now in effect or as may be promulgated from time to time for the government and conduct of operations of the Airport for reasons of safety, health or preservation of property, for the good and orderly appearance of the Premises and for the safe and efficient operation and use of the Premises. Copies of the Rules and Regulations are available to Lessee at the Office of the Airport Manager and via the Internet.

Section 6. Certification of Office of Foreign Assets Control (OFAC)

Section 6.01 Lessee certifies that:

- (1) It is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

- (2) It is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitating this transaction, directly or indirectly on behalf of, any such person, group, entity or nation.

Section 6.02 Lessee hereby agrees to defend, indemnify, and hold harmless County from and against any and all claims, damages, losses, risks, liabilities, and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

Section 7. Suspension of Agreement

Section 7.01 During a time of war or national emergency, the County shall have the right to lease the Premises or any part thereof to the United States or the State of New York for military or other public purposes. If any such lease is executed, any provision of this instrument, which is inconsistent with the provisions of a lease with the United States or the State of New York, shall be suspended and this Lease shall immediately terminate.

Section 7.02 During a time of emergency declared by the County Executive pursuant to Executive Law Article II, the County shall have the right to temporarily suspend this Lease in its entirety or in part, so that the Premises may be used by the County in connection with local emergency response efforts, or other, related governmental purposes. If any such suspension is exercised, upon the mutual consent of the Parties, this Lease may be terminated. In the event the Parties do not terminate the Lease, the fees due under the Lease shall be adjusted proportionately until the suspension is lifted.

Section 8. Chemicals, Fungicides, Herbicides and Pesticides

All chemicals, fungicides, herbicides and pesticides (if any) applied to the Land shall be approved by the Commissioner of prior to use. Lessee shall comply with Suffolk County Code Chapter 380 (Pest Control) and any other applicable federal, state, and local laws relating to pesticides. Lessee shall apply for any necessary exemptions from Suffolk County Code Chapter 647. All notice and reporting requirements shall be adhered to.

Section 9. FAA Approval

In addition to compliance with all local, state and federal laws and regulations, Lessee shall comply with any and all applicable FAA required pre-approvals or approvals. This Lease is contingent upon the FAA issuing the requisite approvals to develop the Premises as described in this Lease. Lessee agrees to assume responsibility for any and all costs incurred by Lessee or the Airport in pursuing and/or securing the necessary FAA approvals in connection with this Lease.

EXHIBIT D
FORM OF LETTER OF CREDIT/BOND

[Sample Format]

Issuer [Name and Address]

Beneficiary
[add address]

Account Party [Name and Address]

Irrevocable Letter of Credit No. _____

Issuance Date: _____

Amount: US \$ _____

Initial Expiration Date:

Location for Demand:

Gentlemen:

The above-named Issuer hereby establishes in favor of the County of Suffolk (the "Beneficiary") this irrevocable Letter of Credit No. _____ in the amount of XXXX, (this "Letter of Credit"), effective immediately, for the account of [Account Party], hereinafter referred to as "[Name]."

[Name] advises us that a performance bond is required in connection with [contract reference or other appropriate information, define "Agreement" if appropriate in context], in the aggregate stated amount of U.S.\$ _____ (amount in words). In lieu of the performance bond, this Letter of Credit is issued to provide financial assurance to the County of Suffolk for the performance under [contract reference]

Initially, this Irrevocable Letter of Credit shall expire at the first to occur of 1) our close of business on the expiration date shown above, or 2) the surrender to us of this Letter of Credit for cancellation. However, it is a condition of this Irrevocable Letter of Credit that it shall be automatically renewed and extended for additional terms of one (1) year each, without amendment (other than expiration date), unless Issuer notifies Beneficiary in writing, by registered or certified mail, return receipt requested, received by Beneficiary not less than sixty (60) days prior to the present or any future expiration date, that Issuer elects not to extend this Irrevocable Letter of Credit. If Issuer gives such notice, Beneficiary may draw upon this Irrevocable letter of Credit up to the full amount hereof, less any prior draft(s) presented by Beneficiary and paid by Issuer, and Beneficiary may hold the sums so drawn for application. Issuer agrees to replace this original Letter of Credit in the event that it is lost, stolen, mutilated or destroyed with one marked as a true copy or replacement.

Funds under this Letter of Credit are available against Beneficiary's demand made on Issuer from time to time, such demand to be made by SWIFT or upon presentation at the location specified above, including the

information in the Drawing Certificate attached hereto as Annex A, with appropriate insertions. [Multiple demands may be made hereunder, as partial drawings are permitted]. Demands under and in compliance with the terms of this irrevocable Letter of Credit will be duly and promptly honored if presented on or before the expiration date or any automatically extended expiration date. This Letter of Credit is not transferable and not assignable.

To the extent not contrary to the express provisions hereof, this Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credit (2007 Revision), International Chamber of Commerce Publication No. 600 (the "UCP"). As to matters not addressed by the UCP, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of New York, without reference to the conflict of law provisions thereof that would direct the application of the laws of another jurisdiction. In the event of a conflict between the laws of the State of New York and the provisions of said UCP, the laws of the State of New York shall control. Venue shall be designated in the Supreme Court, Suffolk County, the United State District Court for the Eastern District of New York, or, if appropriate, a court of inferior jurisdiction in Suffolk County.

Communications with respect to this Letter of Credit shall be in writing and shall be addressed to [Issuer] at _____, specifically referring to this Letter of Credit Number _____
Attention:

This Letter of Credit sets forth in full our undertaking. Except as stated herein, payment of demands made under this Letter of Credit is not subject to any condition or qualification. Issuer's obligations hereunder are primary obligations that shall not be affected by the performance or nonperformance by [Name] of any obligations under [the Agreement or under] or any agreement between [Name] and any other person. Our obligations and liabilities hereunder shall not in any way be affected, modified, amended, reduced, impaired, amplified or limited by any amendment, renewal, extension, modification, compromise, release, discharge or reference of, under, to or in connection with [the Agreement or] any other document or agreement (except only the Drawing Certificate and Performance Bond referred to herein). [Reference herein to the Agreement shall not be deemed to incorporate the same herein by reference.]

Very truly yours,

[NAME]

By: _____

Name:

Title:

ACKNOWLEDGEMENT

STATE OF NEW YORK}

SS:

COUNTY OF SUFFOLK}

On the ____ day of _____ in the year 201__ before me, the undersigned, personally appeared _____, personally known to me or provided 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 acknowledgement)

ANNEX A

FORM OF DRAWING CERTIFICATE

Date: _____

Re: Irrevocable Letter of Credit No. _____ given in lieu of Faithful Performance Bond with respect to [Agreement No. _____ entitled _____ (the "Agreement") dated _____ between _____ ("Beneficiary") and _____, ("Name").

The undersigned, a duly authorized officer of the Beneficiary, hereby certifies to _____ (the "Bank") with reference to Irrevocable Letter of Credit No. [_____] (the "Letter of Credit"); issued by the Bank for the account of the Name in favor of the Beneficiary, that:

(I) The undersigned is a duly elected and incumbent officer of the Beneficiary and is authorized to execute and deliver this certificate and to make demand under the Letter of Credit.

(II) Beneficiary requests the payment of \$_____, corresponding to an amount due and owing under the Agreement. Please make payment to Beneficiary's account: *[insert payment instructions]*

IN WITNESS WHEREOF, the undersigned has executed and delivered this Certificate as of this _____ day of _____, _____.

BENEFICIARY

By: _____

Name: _____

Title: _____

Exhibit E

Suffolk County Legislative Requirements

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

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of section A5-7 of Article V of the Suffolk County Code.

Unless certified by an officer of the Contractor as being exempt from the requirements of section A5-7 of Article V of the Suffolk County Code, the Contractor represents and warrants that it has filed with the Comptroller 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 Comptroller on or before the 31st day of January in each year of the Contract'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 the Contract, 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 Contract.

Required Form:

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

2. Living Wage Law

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 575, of the Suffolk County Code.

This Contract 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 the Contract and to seek other remedies as set forth therein, for violations of this 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

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article I of Chapter 803 of the Suffolk County Code.

County Contractors (as defined by section 803-2) shall comply with all requirements of Chapter 803 of the Suffolk County Code, 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. 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 the Services are performed on County property, the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, non-intimidation agreement, and a majority authorization card agreement.

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

Under the provisions of Chapter 803, the County shall have the authority, under appropriate circumstances, to terminate the Contract 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

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 353 of the Suffolk County Code.

This Contract is subject to the Lawful Hiring of Employees Law of the County of Suffolk. 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 the Contract.

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

The documentation mandated to be kept by this law shall at all times be kept on site. Employee sign-in sheets and register/log books shall be kept on 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 site during such working hours.

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."

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

5. Gratuities

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 664 of the Suffolk County Code.

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of the County or the 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.

6. Prohibition Against Contracting with Corporations that Reincorporate Overseas

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of sections A4-13 and A4-14 of Article IV of the Suffolk County Code.

The Contractor represents that it is in compliance with sections A4-13 and A4-14 of Article IV of the Suffolk County Code. 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

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 880 of the Suffolk County Code.

The Contractor shall comply with Article II of Chapter 880, 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 the Contract with regard to child sexual abuse reporting policy.

8. Non Responsible Bidder

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 189 of the Suffolk County Code.

Upon signing the Contract, the Contractor certifies that it has 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 section 189-5 of the Suffolk County Code under "Nonresponsible Bidder."

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

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article III of Chapter 893 of the Suffolk County Code.

The Contractor shall not use any of the moneys, in part or in whole, and either directly or indirectly, received under the Contract in connection with the prosecution of any civil action against the County in any jurisdiction or any judicial or administrative forum.

10. **Youth Sports**

It shall be the duty of the Contractor to read, become familiar with, and comply with Article III of Chapter 730 of the Suffolk County Code.

All contract agencies that conduct youth sports programs are required to develop and maintain a written plan or policy addressing incidents of possible or actual concussion or other head injuries among sports program participants. Such plan or policy must be submitted prior to the award of a County contract, grant or funding. Receipt of such plan or policy by the County does not represent approval or endorsement of any such plan or policy, nor shall the County be subject to any liability in connection with any such plan or policy.

11. **Work Experience Participation**

If the Contractor is a not-for-profit or governmental agency or institution, each of the Contractor's locations in the County at which the Services are provided shall be a work site for public-assistance clients of Suffolk County pursuant to Chapter 281 of the Suffolk County Code at all times during the Term of the Contract. If no Memorandum of Understanding ("MOU") with the Suffolk County Department of Labor for work experience is in effect at the beginning of the Term of the Contract, the Contractor, if it is a not-for-profit or governmental agency or institution, shall enter into such MOU as soon as possible after the execution of the Contract and failure to enter into or to perform in accordance with such MOU shall be deemed to be a failure to perform in accordance with the Contract, for which the County may withhold payment, terminate the

12. **Leadership in Energy and Environment Design (LEED) Requirement**

a. Resolution 126-2006, as amended by Resolution 551-2008 mandates the incorporation of LEED principles in County construction projects exceeding \$1,000,000 in aggregate construction costs or planning of renovation of an existing County building which requires the expenditure of \$1,000,000 or more or planning of new construction or renovation "built to suit" for long term lease by the County of Suffolk in an effort to promote energy efficiency and sound environmental practices. In the event this Project Construction Cost exceed this threshold, the Contractor shall apply the principles of the LEED Building Rating System 2.2, as a standard that meets environmental and economic performance of commercial buildings, using established

and/or advanced building principles, practices, materials and standards. An equivalent minimum rating of 26 credits is expected, however the Contractor is encouraged to obtain additional credits within budgeted amounts. Although reporting documentations submissions to the U.S. Green Building Council are not required, the Contractor shall submit a detailed report of compliance with the LEED Building Rating System 2.2 to the Department as part of the Sketch Study Phase and shall also reaffirm compliance with LEED Requirements upon final completion of the project.

a. Once approved by the Department of Public Works, the initial report will be forwarded to the County's Council of Environmental Quality (CEQ) as part of the SEQRA process, a prerequisite to appropriating the construction funding. Fifteen (15) copies of the approved report are required.

13. **Light Pollution**

It shall be the duty of the Contractor to read, become familiar with, and comply with Suffolk County Code, Chapter 149.

In the event this Agreement involves the design and/or construction of lighting or lighting systems, the Contractor's design and installation shall comply with the Suffolk County Code, Chapter 149 imposing certain requirements upon new or replacement outdoor lighting fixtures installed by the County on County-owned facilities.

14. **Suffolk County Local Laws Website Address**

Suffolk County Local Laws, Rules and Regulations can be accessed on the homepage of the Suffolk County Legislature:
<http://legis.suffolkcountyny.gov/main.html>

End of Exhibit E

**EXHIBIT F
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 _____, 2014, 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 @, a @ company, with an address at @ (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 Lessee have entered into a Lease dated as of _____, 2014 (the "Lease"), pursuant to which Tenant has leased from Landlord certain land located at _____, in the Town 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 expiration of the Final Term 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. **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: _____
Dennis M. Cohen
Chief Deputy County Executive

TENANT:
@

By: _____
Name
Title:

91
P56
625
9-23-19

①



24-Sep-2019
10:37:35 AM

Transaction Summary Report

Page 1 of 1

Bank: COF Eastern (NY/NJ) / 021407912
Account: 3724109198 / F S GABRESKI AIRPORT ACCOUNT / USD
Date: 23 Sep 2019

Credit Transactions	Amount	Bank Ref.	Customer Ref.
ACH deposit AES DISTRIBUTED AA COUNTY OF SUFFOLK (ALL 2000002362US881	67,265.88	A19266010048924	2000002362US881
Total Credits	67,265.88		

Solar

Note: All times displayed are in Eastern Time
Transactions subject to posting