

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(TOWN OF BROOKHAVEN, NEW YORK)

and

SHOREHAM SOLAR COMMONS LLC

LEASE AND PROJECT AGREEMENT

Dated as of February 1, 2017

Town of Brookhaven Industrial Development Agency
(Shoreham Solar Commons LLC 2017 Facility)

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THIS LEASE AND PROJECT AGREEMENT, dated as of February 1, 2017 (this “**Lease Agreement**”), is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “**Agency**”), and SHOREHAM SOLAR COMMONS LLC, a limited liability company, organized and existing under the laws of the state of Delaware and authorized to transact business in the State of New York, having an office 1 South Wacker Drive, Suite 1800, Chicago, Illinois 60606 (the “**Company**”).

R E C I T A L S

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the “**State**”); and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State; and

WHEREAS, the aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act, as amended, and Chapter 358 of the Laws of 1970 of the State, as amended (collectively, the “**Act**”), the Agency was created and is empowered under the act to undertake the Project Work and the leasing of the Facility defined below; and

WHEREAS, the Company submitted a request for the Agency’s assistance in the acquisition, construction, renovation, and equipping of a solar electric generating facility, including (i) the acquisition of an approximately 150 acre parcel of land located at 24 Cooper Street, Shoreham, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 200-126.00-02.00-002.000; 0200-127.00-01.00-003.000; 0200-127.00-01.00-006.00; 0200-148.00-02.00-005.000; 0200-148.00-02.00-006.000) (the “**Land**”), and the demolition of the existing residence thereon, the renovation of existing structures (including outbuildings and clubhouse) for use as offices, storage, and related uses by the Company, the construction of a solar powered electric generation facility to be located thereon (the “**Improvements**”), and (ii) the acquisition and installation therein of certain equipment and personal property consisting of an approximately 24.9MW (AC) ground-mounted modules, stationary/non-tracking solar array installed on mounting racks, including approximately 125,944, 72-cell polycrystalline modules, combiner boxes, inverters, transformers, and other

associated interconnect infrastructure to connect to LIPA's power grid (the "**Equipment**"; and together with the Land and the Improvements, the "**Facility**"), which Facility is to be leased and subleased to the Company and used by the Company for its primary use as a solar electric generating facility (the "**Project**"); and

WHEREAS, the Agency previously provided its assistance to the Company pursuant to a certain Equipment Lease Agreement, dated as of June 1, 2016 (the "**Equipment Lease Agreement**"), between the Agency and the Company; and

WHEREAS, in connection with the Equipment Lease Agreement, the Agency and the Company entered into a certain Equipment Recapture Agreement, dated as of June 1, 2016 (the "**Equipment Recapture Agreement**"), between the Agency and the Company; and

WHEREAS, the Company has acquired a leasehold interest in the Land and the existing improvements thereon pursuant to a Solar Lease and Easement Agreement, dated February 27, 2017 (the "**Ground Lease**"), from PHIE Shoreham LLC (the "**Owner**") to the Company; and

WHEREAS, the Company has agreed to sublease the Land and the Improvements to the Agency pursuant to the terms of a certain Company Lease Agreement, dated as of February 1, 2017 (the "**Company Lease**"), by and between the Company and the Agency; and

WHEREAS, in connection with the acquisition, construction, renovation, and equipping of the Facility and the entering into the Company Lease, the Equipment Lease Agreement and the Equipment Recapture Agreement will be amended and restated and incorporated pursuant to this Lease Agreement; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to complete the Project Work; and

WHEREAS, the Company has agreed to transfer title to the Equipment to the Agency pursuant to a certain Bill of Sale, dated the Closing Date (the "**Bill of Sale**"); and

WHEREAS, the Agency has agreed to sub-sublease and lease the Facility to the Company, and the Company desires to rent the Facility from the Agency, upon the terms and conditions set forth in this Lease Agreement.

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby amend and restate, and incorporate herein, the Equipment Lease and the Equipment Recapture Agreement, and mutually agree, as follows:

ARTICLE I DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

ARTICLE II
REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform each of the Agency Documents and the other documents contemplated thereby. Each of the Agency Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Agency.

(b) The Agency will acquire a subleasehold interest in the Land and Improvements, cause the Improvements to be renovated and the Equipment to be acquired and installed and will lease and sublease the Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) By resolution dated June 8, 2016, the Agency determined that, based upon the review by the Agency of the materials submitted and the representations made by the Company relating to the Facility, including the materials submitted by the Company to the Brookhaven Planning Board, and a review of the Brookhaven Planning Board's findings statement dated March 7, 2016, the Facility would not have a "significant impact" or "significant effect" on the environment within the meaning of the SEQR Act.

(d) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof, the Agency's Certificate of Establishment or By-Laws, as amended, or any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-Laws, restriction, agreement or instrument, except for Permitted Encumbrances.

(e) Each of the Agency Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

(f) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to utilize the Facility in the Town of Brookhaven, New York in furtherance of the Public Purposes of the Agency.

(g) The Agency will execute, acknowledge (if appropriate) and deliver from time to time such instruments and documents which are necessary or desirable to carry out the intent and purposes of this Lease Agreement.

Section 2.2 Representations and Covenants of Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a limited liability company, organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, is in good standing under the laws of the State of New York and the State of Delaware, and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

(b) Neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Company's Organizational Documents, as amended, or any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such law, ordinance, Organizational Documents, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) The Facility, the Project Work and the design, and operation of the Facility will conform with all applicable zoning, planning, building and Environmental Laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. Under penalty of perjury, the Company certifies that it is in substantial compliance with all local, state, and federal tax, worker protection and environmental laws, rules and regulations.

(d) Each of the Company Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(e) The Facility is and will continue to be a "project" as such quoted term is defined in the Act. The Company will not take any action, or fail to take any action, which action or failure to act would cause the Facility not to constitute a "project" as such quoted term is defined in the Act.

(f) The Project and the related financial assistance is reasonably necessary to preserve the competitive position of the Facility occupant(s) in its respective industry.

(g) The Company agrees to take any actions reasonably deemed necessary by the Agency, or its Chairman, Vice Chairman, Chief Executive Officer, or any member or officer of the Agency, counsel to the Agency or Transaction Counsel, in order to ensure compliance with Sections 2.2(e) and (f) and 9.3 of this Lease Agreement provided that the Company receives duly acknowledged written confirmation from the Agency setting forth the reason(s) for said action(s). Without limiting the generality of the foregoing, the Company will provide the

Agency with any and all information and materials describing proposed Facility occupants as necessary.

(h) The Company will cause future tenants of the Facility, if any, to execute and deliver to the Agency a Tenant Agency Compliance Agreement, in form and substance satisfactory to the Agency, prior to the occupancy of the Facility, or a portion thereof, by such tenant, in accordance with the provisions of Section 9.3 hereof.

(i) The Company hereby represents to the Agency that the Facility is not used in making retail sales of goods and services to customers who personally visit the Facility as contemplated by New York General Municipal Law (the "GML") Section 862.

(j) There is no action or proceeding pending or, to the best of the Company's knowledge, after diligent inquiry, threatened, by or against the Company by or before any court or administrative agency that would adversely affect the ability of the Company to perform its obligations under this Lease Agreement or any other Company Document.

(k) The Company has obtained all authorizations, consents and approvals of governmental bodies or agencies required to be obtained by it as of the Closing Date in connection with the execution and delivery of this Lease Agreement and each other Company Document or in connection with the performance of its obligations hereunder and under each Company Document.

(l) The Project Application Information was true, correct and complete as of the date submitted to the Agency, and no event has occurred or failed to occur since such date of submission which could cause any of the Project Application Information to include any untrue statement of a material fact or omit to state any material fact required to be stated therein to make such statements not misleading.

(m) A true, accurate and complete copy of the Ground Lease is annexed hereto as Exhibit I. The Ground Lease shall not be amended or modified with respect to any material terms or terminated without the approval of the Agency, whose approval shall not be unreasonably withheld, conditioned or delayed.

ARTICLE III CONVEYANCE OF FACILITY SITE; PROJECT WORK AND COMPLETION

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) a subleasehold interest in the Land, including any buildings, structures or other improvements thereon, and (ii) lien-free title to the Equipment, and will convey or cause to be conveyed to the Agency lien-free title to or a leasehold interest in the Equipment and Improvements acquired after the date hereof, in each case except for Permitted Encumbrances.

Section 3.2 Title Report and Survey. The Company has obtained and delivered to the Agency (i) a title report (in form and substance acceptable to the Agency) with respect to the Land and existing Improvements, including municipal searches, prepared by a reputable national

title insurance agency authorized to conduct business in the state and (ii) a current or updated survey of each of the Land and the existing Improvements certified to the Agency.

Section 3.3 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the sub-subleasehold interests therein are securing the financial obligations of the Company. The Facility and the sub-subleasehold interests therein secure the obligations of the Company to the Agency under this Lease Agreement, including the Company's obligation to acquire and maintain the Facility and complete the Project Work on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency.

Section 3.4 Project Work.

(a) The Company agrees that, on behalf of the Agency, it will complete the Project Work in accordance with the Plans and Specifications.

(b) The Company may revise the Plans and Specifications from time to time without the consent or approval of the Agency; provided that any material revisions to the Plans and Specifications shall require the Agency's consent, which consent shall not be unreasonably withheld, delayed or conditioned, and that the Facility shall retain its overall configuration and intended purposes and shall remain a "project" as defined in the Act.

(c) Except as set forth in Section 6.2 hereof, fee or leasehold title, as applicable, to all materials, equipment, machinery and other items of Property incorporated or installed in or placed in, upon, or under the Facility shall vest in the Agency immediately upon the Company's obtaining an interest in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate so to vest such title in the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) The Agency shall enter into, and accept the assignment of, such contracts, in form and substance reasonably acceptable to the Agency and containing such exculpatory provisions as the Agency may reasonably require, as the Company may request in order to effectuate the purposes of this Section 3.4.

(e) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law, the Executive Law and the Civil Rights Law of the State applicable to the completion of the Project Work and shall include in all construction contracts all provisions that shall be required to be inserted therein by such provisions. The Company shall comply with the relevant policies of the Agency with respect to such laws, which are set forth as Exhibit G attached hereto. Except as provided in the preceding two sentences, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 3.5 Identification of Equipment. All Equipment which is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may

be approved by the Agency. All Property of whatever nature affixed or attached to the Land or used or to be used by the Company in connection with the Land or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Lease Agreement and such Property was properly identified by such appropriate records as were approved by the Agency.

Section 3.6 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency (i) a certificate signed by an Authorized Representative of the Company stating (a) that the Project Work has been completed in accordance with the Plans and Specifications therefor, (b) that payment for all labor, services, materials and supplies used in such Project Work has been made or provided for, and (c) the total amount of the costs of the Project, in reasonable detail; and (ii) such other certificates as may be reasonably satisfactory to the Agency, including without limitation, a final certificate of occupancy, if applicable. The Company agrees to complete the Project Work by December 31, 2019.

Section 3.7 Remedies to Be Pursued Against Contractors, Subcontractors, Materialmen and Their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's sole cost and expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. The Net Proceeds of any recovery from a contractor or subcontractor or materialman or other person shall be paid to the Company.

Section 3.8 Reserved.

ARTICLE IV LEASE OF FACILITY RENTAL PROVISIONS

Section 4.1 Lease of Facility. The Agency hereby sub-subleases and leases the Facility, consisting of the Land as more particularly described in Exhibit A attached hereto and the Improvements and the Equipment as more particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this Lease Agreement.

Section 4.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 8.1 and 10.2 hereof), and the leasehold and sub-subleasehold estate

created hereby shall commence, and the Company shall accept possession of the Facility on the Closing Date.

(b) Except as provided in Sections 10.2 and 11.1 hereof, the estate created hereby shall terminate at 11:58 p.m. on November 30, 2037 (the “**Lease Term**”).

(c) Except as provided in Sections 8.1 and 10.2 hereof, upon paying the rent and additional rent and observing and performing all the terms, covenants and conditions to be observed or performed by the Company, the Agency shall not take any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility, subject to the terms, covenants and conditions of this Lease Agreement, and will, at the request of the Company and at the Company’s sole cost and expense, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility as hereinabove provided.

Section 4.3 Rents and Other Amounts Payable.

(a) The Company shall pay to the Agency on the Closing Date the balance of the Agency’s administrative fee in the amount of \$2,500.00. If the total amounts of costs of the Project shall exceed the amounts in the set forth in the Project Application Information by more than five percent (5%), then the Company shall pay to the Agency, within ten (10) days after written request, the additional administrative fee determined by the Agency to be due. The Company shall pay basic rent for the Facility as follows: One Dollar (\$1.00) per year commencing on the Closing Date, receipt of which is hereby acknowledged, and on each and every January 1 thereafter during the term of this Lease Agreement. In addition, the Company shall pay to the Agency an annual compliance fee of \$1,000 on or before January 1 of each year commencing January 1, 2017 and continuing through the Lease Term; receipt of the annual compliance fee for 2017 is hereby acknowledged.

(b) In addition to the payments of basic rent pursuant to Section 4.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within ten (10) days of receipt of demand therefor, an amount equal to the sum of the expenses of the Agency and the members thereof incurred (i) by reason of the Agency’s ownership, leasing, subleasing, constructing, renovating, or financing of the Facility, or (ii) in connection with the carrying out of the Agency’s duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Lease Agreement. The foregoing shall be in addition to any annual or continuing administrative or management fee imposed by the Agency now or hereafter.

(c) The Company, under the provisions of this Section 4.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 4.3(a) or 4.3(b), the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 4.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 4.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein, shall be general obligations of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, or (ii) fail to observe any of its other covenants or agreements in this Lease Agreement.

Section 4.5 No Warranty of Condition or Suitability by Agency. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE FACILITY, OR THE SUITABILITY OF THE FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY OR THE EXTENT TO WHICH FUNDS AVAILABLE TO THE COMPANY WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE PROJECT WORK. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY, ON BEHALF OF ITSELF, IS SATISFIED THAT THE FACILITY IS SUITABLE AND FIT FOR PURPOSES OF THE COMPANY. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OF THE FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

ARTICLE V

PILOT PAYMENTS; SALES TAX EXEMPTION; AND RECAPTURE OF BENEFITS

Section 5.1 PILOT Payments.

(a) As long as this Lease Agreement is in effect, the Company agrees to make payments in lieu of all real estate taxes and assessments (the "**PILOT Payments**") (in addition to paying all special ad valorem levies, special assessments or Special District Taxes and service charges against real property located in the Hamlet of Shoreham, Town of Brookhaven, Shoreham- Wading River School District, Suffolk County (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is or may be wholly or partially located) (the "**Taxing Authorities**") which are or may be imposed for special improvements or special district improvements) which would be levied upon or with respect to the Facility if the Facility were owned by the Company exclusive of the Agency's subleasehold interest (the "**Taxes on the Facility**"). The amounts of such PILOT Payments are set forth in Exhibit C attached hereto. PILOT Payments shall be allocated among

the Taxing Authorities in proportion to the amount of real property tax and other taxes which would have been received by each Taxing Authority if the Facility was owned by the Company exclusive of the Agency's subleasehold interest.

(b) After the effective date of this Lease Agreement and until the provisions of paragraph 5.1(c) become effective, the Company shall pay, as payments in lieu of taxes and assessments, one hundred percent (100%) of the taxes and assessments that would be levied upon the Facility by the respective Taxing Authorities if the Facility were owned by the Company exclusive of the Agency's leasehold interest.

(c) Commencing with the 2017/2018 Tax Year the Company shall pay, as PILOT Payments, the amounts set forth on Exhibit C attached hereto and made a part hereof.

(d) The Company shall pay, or cause to be paid, the amounts set forth in subsections (a), (b) and (c) above, as applicable, after receipt of tax bills from the Agency or the Taxing Authorities, as the case may be. Failure to receive a tax bill shall not relieve the Company of its obligation to make all payments provided for hereunder. If, for any reason, the Company does not receive an appropriate tax bill, the Company shall have the responsibility and obligation to make all reasonable inquiries to the Taxing Authorities and to have such a bill issued, and thereafter to make payment of the same no later than the due dates provided therein. PILOT Payments made after the due date(s) as set forth in the applicable tax bills shall accrue interest (and penalties) at the rates applicable to late payments of taxes for the respective Taxing Authorities and as further provided in the GML, including Section 874(5) thereof, which currently provides for an initial penalty of five percent (5%) of the amount due and an additional penalty of one percent (1%) per month on payments more than one month delinquent. In addition, for any PILOT Payment made after the date due, the Company shall pay to the Agency a late fee in accordance with the policy of the Agency then in effect. Anything contained in this paragraph (d) to the contrary notwithstanding, the Company shall have the obligation to make all annual payments required by this paragraph (other than payments of penalties, if any) in two equal semi-annual installments on or prior to February 10 and May 31 of each year of the Lease Term or on such other due dates as may be established from time to time during the Lease Term.

(e) During the Lease Term, the Company shall continue to pay all special ad valorem levies, special assessments, and service charges levied against the Facility for special improvements or special district improvements.

(f) In the event that any structural addition shall be made to the building or buildings included in the Facility subsequent to the Completion Date, or any additional building or improvement shall be constructed on the Land (such structural additions, buildings and improvements being referred to hereinafter as "**Additional Facilities**"), the Company agrees to make additional payments in lieu of taxes to the Taxing Authorities in amounts equal to the product of the then current ad valorem tax rates which would be levied upon or with respect to the Additional Facilities by the Taxing Authorities if the Additional Facilities were owned by the Company exclusive of the Agency's subleasehold interest times the assessment or assessments established for that tax year by the respective Taxing Authorities having appropriate assessing jurisdiction. All other provisions of this Section 5.1 shall apply to this obligation for additional payments.

(g) In the event that the Agency's subleasehold interest in the Facility or any part thereof terminates at such time in reference to any taxable status date as to make it impossible to place such Facility or part thereof on the tax rolls of the Taxing Authorities, or appropriate special districts, as the case may be, by such taxable status date, the Company hereby agrees to pay, at the first time taxes or assessments are due following the taxable status date on which such Facility or part thereof is placed on the tax rolls, an amount equal to the taxes or assessments which would have been levied on such Facility or part thereof had it been on the tax rolls from the time of the termination of the Agency's subleasehold interest until the date of the tax rolls following the taxable status date as of which such Facility or part thereof is placed on the tax rolls. There shall be deducted from such amount any amounts previously paid pursuant to this Section 5.1 by the Agency or the Company to the respective Taxing Authorities relating to any period of time after the date of termination of the Agency's interest. The provisions of this subsection (g) shall survive the termination or expiration of the Lease Agreement. Any rights the Company may have against its respective designees are separate and apart from the terms of this subsection (g), and this subsection (g) shall survive any transfer from the Agency to the Company.

(h) In the event the Facility or any part thereof is declared to be subject to taxation for taxes or assessments by an amendment to the Act or other legislative change or by a final judgment of a court of competent jurisdiction, the obligations of the Company under this Section 5.1 shall, to such extent, be null and void.

(i) In the event the Company shall enter into a subsequent payment-in-lieu-of-tax agreement or agreements with respect to the Taxes on the Facility directly with any or all Taxing Authorities in the jurisdiction of which the Facility is located, the obligations of the Company under this Section 5.1, which are inconsistent with such future agreement or agreements, shall be superseded and shall, to such extent, be null and void.

(j) As long as this Lease Agreement is in effect, the Agency and the Company agree that (i) the Company shall be deemed to be the owner of the Facility and of the Additional Facilities for purposes of instituting, and shall have the right to institute, administrative or judicial review of an assessment of the real estate with respect to the Facility and of the Additional Facilities pursuant to the provisions of Article 7 of the Real Property Tax Law or any other applicable law, as the same may be amended from time to time, and (ii) the Agency, at the request of the Company, shall request the Assessor of the Town of Brookhaven, or any other assessor having jurisdiction to assess the Facility, to take into consideration the value of surrounding properties of like character when assessing the Facility. Notwithstanding the foregoing, in the event that the assessment of the real estate with respect to the Facility and the Additional Facilities is reduced as a result of any such administrative or judicial review so that such complaining party would be entitled to receive a refund or refunds of taxes paid to the respective Taxing Authorities, if such complaining party were the owner of the Facility and the Additional Facilities exclusive of the Agency's leasehold interest therein, such complaining party shall not be entitled to receive a refund or refunds of, or credit or credits against, the PILOT Payments paid or payable pursuant to this Lease Agreement and the PILOT Payments set forth on Exhibit C hereto shall not be reduced. In no event shall the Agency be required to remit to the Company or any Taxing Authority any moneys otherwise due as a result of a reduction in the assessment of the Facility (or any part thereof) due to a certiorari review. If the Company

receives a reduction in assessment in the last year of the Lease Agreement after it has made its final payments in lieu of taxes, the Company acknowledges that it shall look solely to the Taxing Authorities for repayment or for a credit against the first payment(s) of Taxes on the Facility which will be due after the Facility is returned to the tax rolls. The Company hereby agrees that it will notify the Agency if the Company shall have requested a reassessment of the Facility or a reduction in the taxes on the Facility or shall have instituted any tax certiorari proceedings with respect to the Facility. The Company shall deliver to the Agency copies of all notices, correspondence, claims, actions and/or proceedings brought by or against the Company in connection with any reassessment of the Facility, reduction of taxes with respect to the Facility or tax certiorari proceedings with respect to the Facility.

(k) The Company, in recognition of the benefits provided under the terms hereof, including, but not limited to, the PILOT Payments set forth in Exhibit C hereto, and for as long as the Lease Agreement is in effect, expressly waives any rights it may have for any exemption under Section 485-b of the Real Property Tax Law or any other exemption under any other law or regulation (except, however, for the exemption provided by Title 1 of Article 18-A of the GML) with respect to the Facility. The Company, however, reserves any such rights with respect to the Additional Facilities as referred to in subsection (f) hereof and with respect to the assessment and/or exemption of the Additional Facilities.

Section 5.2 Sales Tax Exemption.

(a) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency (i) to complete the Project Work in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the Project Work with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in connection with the Project Work, (iv) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the Project Work, and (v) to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company from purchasing any motor vehicle, including any cars, trucks, vans or buses which are licensed by the Department of Motor Vehicles for use on public highways or streets.

(b) Agency's Exempt Status. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, is exempt from the imposition of Sales and Use Taxes. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required. Notwithstanding the foregoing, the Agency makes no representation to the Company, any Agent or any third party that any Sales Tax Exemption is available under this Lease Agreement.

(c) Scope of Authorization of Sales Tax Exemption. The Agency hereby authorizes the Company, subject to the terms and conditions of this Lease Agreement, to act as its agent in

connection with the Facility for the purpose of effecting purchases and leases of Eligible Items so that such purchases and leases are exempt from the imposition of Sales and Use Taxes. The Agency's authorization with respect to such Sales Tax Exemption provided to the Company and its Agents pursuant to this Lease Agreement and any Sales Tax Agent Authorization Letters issued hereunder shall be subject to the following limitations:

- (i) The Sales Tax Exemption shall be effective only for a term commencing on the Closing Date and expiring upon the earliest of (A) the termination of this Lease Agreement, (B) the Completion Date, (C) failure of the Company to file Form ST-340, as described in Section 5.2(g) below, (D) the termination of the Sales Tax Exemption authorization pursuant to Section 10.2, (E) the date upon which the Company received the Maximum Company Sales Tax Savings Amount, or (F) December 31, 2019.
- (ii) The Sales Tax Exemption authorization set forth herein shall automatically be suspended upon written notice to the Company that the Company is in default under this Lease Agreement until such default is cured to the satisfaction of the Agency.
- (iii) The Sales Tax Exemption authorization shall be subject to all of the terms, conditions and provisions of this Lease Agreement.
- (iv) The Sales Tax Exemption shall only be utilized for Eligible Items which shall be purchased, incorporated, completed or installed for use only by the Company at the Facility (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Item to a Person as shall not constitute the Company), it being the intention of the Agency and the Company that the Sales Tax Exemption shall not be made available with respect to any Eligible Item unless such item is used solely by the Company at the Facility.
- (v) The Sales Tax Exemption shall not be used for any Ineligible Item.
- (vi) The Sales Tax Exemption shall not be used to benefit any person or entity, including any tenant or subtenant located at the Facility, other than the Company, without the prior written consent of the Agency.
- (vii) By execution by the Company of this Lease Agreement, the Company agrees to accept the terms hereof and represents and warrants to the Agency that the use of the Sales Tax Exemption by the Company or by any Agent is strictly for the purposes stated herein.
- (viii) Upon the Termination Date, the Company and each Agent shall cease being agents of the Agency, and the Company shall immediately notify each Agent in writing of such termination and that the Sales Tax Agent Authorization Letter issued to any such Agent is likewise terminated.

- (ix) The Company agrees that the aggregate amount of Company Sales Tax Savings realized by the Company and by all Agents of the Company, if any, in connection with the Facility shall not exceed in the aggregate the Maximum Company Sales Tax Savings Amount.

(d) Procedures for Appointing Agents. If the Company desires to seek the appointment of a contractor, a subcontractor or other party to act as the Agency's agent (an "**Agent**") for the purpose of effecting purchases which are eligible for the Sales Tax Exemption pursuant to authority of this Lease Agreement, it must complete the following steps:

- (i) For each Agent, the Company must complete and submit Form ST-60 to the Agency. The foregoing is required pursuant to the GML Section 874(9) and Form ST-60 and the regulations relating thereto which require that within thirty (30) days of the date that the Agency appoints a project operator or other person or entity to act as agent of the Agency for purposes of extending a sales or use tax exemption to such person or entity, the Agency must file a completed Form ST-60 with respect to such person or entity.
- (ii) Following receipt by the Agency of the completed Form ST-60, such Agent must be appointed as Agent by the Agency, by execution by the Agency and the Agent of a Sales Tax Agent Authorization Letter in the form attached hereto as Exhibit E. The determination whether to approve the appointment of an Agent shall be made by the Agency, in its sole discretion. If executed, a completed copy of the Sales Tax Agent Authorization Letter shall be sent to the Company. The Company must also provide a copy of an executed Sales Tax Agent Authorization Letter together with a copy of this Lease Agreement to the Agent within five (5) Business Days after receipt thereof by the Company.
- (iii) The Company shall ensure that each Agent shall observe and comply with the terms and conditions of its Sales Tax Agent Authorization Letter and this Lease Agreement.

(e) Form ST-60 Not an Exemption Certificate. The Company acknowledges that the executed Form ST-60 designating the Company or any Agent as an agent of the Agency shall not serve as a sales or use tax exemption certificate or document. Neither the Company nor any other Agent may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW,

THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

(f) Form ST-123 Requirement. As an agent of the Agency, the Company agrees that it will, and will cause each Agent to, present to each seller or vendor a completed and signed Form ST-123 for each contract, agreement, invoice, bill or purchase order entered into by the Company or by any Agent, as agent for the Agency, for the Project Work. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill or invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. The Company shall retain copies of all such contracts, agreements, invoices, bills and purchase orders for a period of not less than six (6) years from the date thereof. For each Agent the Form ST-123 shall be completed as follows: (i) the "Project information" section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent's Sales Tax Agent Authorization Letter; and (iii) the "Exempt purchases" section of Form ST-123 should be completed by marking "X" in box "A" only.

(g) Form ST-340 Filing Requirement. The Company shall annually (currently, by each February 1st with respect to the prior calendar year) file a Form ST-340 with NYSDTF, and with a copy to the Agency, in a manner consistent with such regulations as is or may be prescribed by the Commissioner of NYSDTF (the "**Commissioner**"), of the value of all Company Sales Tax Savings claimed by the Company and each Agent in connection with the Facility. Should the Company fail to comply with the foregoing requirement, the Company and each Agent shall immediately cease to be agents of the Agency in connection with the Facility without any further action of the Agency and the Company shall immediately and without demand notify each Agent appointed by the Agency in connection with the Facility of such termination.

(h) Sales Tax Registry Filing Requirement. No later than August 1st of each year, the Company shall file with the Agency a completed Sales Tax Registry, in the form attached hereto as Exhibit F, which accounts for all Company Sales Tax Savings realized by the Company and each Agent during the prior annual period ending on the preceding June 30th (or such shorter period beginning on the Closing Date and ending on the preceding June 30th), unless the Termination Date occurred prior to such June 30th. Within ten (10) days after the Termination Date, the Company shall file with the Agency a completed Sales Tax Registry which accounts for all Company Sales Tax Savings realized by the Company and each Agent during the period from the preceding July 1st to the Termination Date.

(i) Special Provisions Relating to State Sales Tax Savings.

(i) The Company covenants and agrees to comply, and to cause each of its contractors, subcontractors, Agents, persons or entities to comply, with the requirements of GML Sections 875(1) and (3) (the "**Special Provisions**"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Lease Agreement and the Special Provisions, the Special Provisions shall control.

- (ii) The Company acknowledges and agrees that pursuant to GML Section 875(3), the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Company, State Sales Tax Savings taken or purported to be taken by the Company, any Agent or any other person or entity acting on behalf of the Company to which the Company is not entitled or which are in excess of the Maximum Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company failed to comply with a material term or condition to use property or services in the manner required by this Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner to assess and determine State Sales and Use Taxes due from the Company under Article 28 of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

(j) Subject to the provisions of subsection (i) above, in the event that the Company or any Agent shall utilize the Sales Tax Exemption in violation of the provisions of this Lease Agreement or any Sales Tax Agent Authorization Letter, the Company shall promptly deliver notice of same to the Agency, and the Company shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Company or any Agent (as applicable).

(k) Upon request by the Agency with reasonable notice to the Company, the Company shall make available at reasonable times to the Agency and/or the Independent Accountant all such books, records, contracts, agreements, invoices, bills or purchase orders of the Company and any Agent, and require all appropriate officers and employees of the Company to respond to reasonable inquiries by the Agency and/or the Independent Accountant, as shall be necessary (y) to indicate in reasonable detail those costs for which the Company or any Agent shall have utilized the Sales Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Company under this Section 5.2.

Section 5.3 Reserved.

Section 5.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

- (i) If there shall occur a Recapture Event after February 28, 2017, but on or before December 31, 2020, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);
- (ii) If there shall occur a Recapture Event on or after January 1, 2021 but on or before December 31, 2022, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy-five percent (75%) of the Recaptured Benefits;
- (iii) If there shall occur a Recapture Event on or after January 1, 2023 but on or before December 31, 2024, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event on or after January 1, 2025 but on or before December 31, 2025, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty-five percent (25%) of the Recaptured Benefits; and
- (v) If there shall occur a Recapture Event on or after January 1, 2026 the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term “**Recaptured Benefits**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by the Lease Agreement including, but not limited to, the amount equal to 100% of:

- (i) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the “**Company Sales Tax Savings**”); and
- (ii) real property tax abatements granted pursuant to Section 5.1 hereof (the “**Real Property Tax Abatements**”).

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable directly to the Agency or the State of New York if so directed by the Agency within ten (10) days after such notice.

- (c) The term “**Recapture Event**” shall mean any of the following events:
- (i) The occurrence and continuation of an Event of Default under this Lease Agreement (other than as described in clause (iv) below or in subsections (d) or (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or
 - (ii) The Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or
 - (iii) The sale of the Facility or closure of the Facility and/or departure of the Company from the Town of Brookhaven, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or
 - (iv) Failure of the Equipment to be retained within the Town of Brookhaven; or
 - (v) The termination or expiration of this Lease Agreement prior to the acquisition and installation of the Equipment on the Land; or
 - (vi) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Company’s activities in, or commitment to, the Town of Brookhaven, Suffolk County, New York; or
 - (vii) The Company receives Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) Reserved.

(e) Notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a “force majeure” event (as more particularly defined in Section 10.1(b) hereof), provided, however, “force majeure” shall not apply to the failure to pay to the Agency when due any fees, charges or expenses payable to the Agency, after giving effect to applicable rights of notice and cure, (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a “**Loss Event**”) to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year the number of FTEs located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4, from amounts received by the Agency pursuant to this Section 5.4.

ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Improvements or the Equipment. During the Lease Term, the Company shall not remove any material part of the Facility outside of the jurisdiction of the Agency and shall (i) keep the Facility or cause the Facility to be kept in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility; and (iii) operate the Facility in a sound and economic manner.

(b) The Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. The Company may not make any changes to the footprint of the Facility, and any additions expanding the square footage of the Facility (including the addition of any stories whether above or below ground) or make any additions, modifications or improvements to the Facility which will materially and/or adversely affect the structural integrity or value of the Facility without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed. All such additions, modifications or improvements made by the Company after the date hereof shall become a part of the Facility and the Property of the Agency. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to or an interest in such Property.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 3.5 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal

property shall not become, or be deemed to become, a part of the Facility, so long as such additional property is properly identified by such appropriate records, including computerized records, as approved by the Agency. The Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur: (i) if any Event of Default has occurred or (ii) if any such removal shall adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended, and provided further, that if any damage to the Facility is occasioned by such removal, the Company agrees promptly to repair or cause to be repaired such damage at its own expense.

Section 6.3 Taxes, Assessments and Utility Charges.

(a) Subject to the Sales Tax Exemption and the Real Property Tax Abatements as provided hereunder, the Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost which may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, PILOT Payments and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof, and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; and (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such proceedings and any appeal therefrom, provided, however, that (i) neither the Facility nor any part thereof or interest therein would be in any immediate danger of being sold, forfeited or lost by reason of such proceedings and (ii) the Company shall have set aside on its books adequate reserves with respect thereto and shall have furnished such security, if any, as may be required in such proceedings or requested by the Agency.

(c) The Agency agrees that if it or the Company contests any taxes, assessments or other charges provided for in paragraph (b) hereof, all sums returned and received by the Agency, as a result thereof, will be promptly transmitted by the Agency to the Company and that the Company shall be entitled to retain all such amounts; which such obligation shall survive the expiration or termination of this Lease Agreement.

(d) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Agency, official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency evidencing payment of any tax.

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, if any, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by facilities of like size and type and shall pay or cause to be paid, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with a uniform standard extended coverage endorsement, in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as reasonably determined by the Company, but in no event less than the greater of \$1,000,000 or the amount as may be required by any Lender. During the Construction Period, such policy shall be written on an industry standard Builder's Risk policy form..

(b) Workers' compensation insurance, disability benefits insurance and each other form of insurance which the Company or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or any permitted sublessee who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Facility.

(c) Insurance protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent protecting the Agency and the Company against any loss, liability or damage for personal injury, including bodily injury or death, and property damage); and blanket excess liability coverage, in an amount not less than \$5,000,000 combined single limit or equivalent, protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

(d) During the Construction Period, if any (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Company shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation and employer's liability with limits in accordance with applicable law.

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
Products and Completed Operations
Owners Protective
Contractors Protective
Contractual Liability
Personal Injury Liability
Broad Form Property Damage
(including completed operations)
Explosion Hazard
Collapse Hazard
Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iv) Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$5,000,000.

(e) A policy or policies of flood insurance in an amount not less than the greater of \$1,000,000 or the amount that may be required by any Lender or the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Agency that no portion of the Land is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

(f) Such other insurance on or in connection with the Facility and the activities thereat as the Agency may reasonably require from time to time.

(g) The Agency does not in any way represent that the insurance specified in this Lease Agreement, whether in scope or coverage or limits of coverage, is adequate or sufficient to protect the Company's business or interests.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. The company issuing the policies required by Section 6.4(a) and (e) shall be rated "A" or better by A.M. Best Co., Inc. in Best's Key Rating Guide. Such insurance may be written with deductible amounts

comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days' prior written notice to the Agency of the restriction, cancellation or modification thereof. The policy of insurance required by Section 6.4(b) shall name the Agency as a certificate holder. The policy evidencing the insurance required by Section 6.4(c) hereof shall include the Agency as an additional insured. All policies evidencing the insurance required by Section 6.4(d)(ii), (iii) and (iv) shall name the Agency and the Company as additional insureds. The Agency acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Company to any Lender pursuant to the Mortgage, and the Agency consents thereto. The Agency hereby acknowledges that upon request of any Lender, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under any Mortgage) to any Lender the policies of insurance required under Section 6.4(a), so and in such manner and form that any Lender shall at all times, upon such request and until the payment in full of any Loan, have and hold said policies and the Net Proceeds thereof as collateral and further security under any Mortgage for the payment of any Loan. The policies required under Section 6.4(a) shall contain appropriate waivers of subrogation.

(b) The certificates of insurance required by Section 6.4(a), (b), (c) and (e) hereof shall be deposited with the Agency on or before the Closing Date. A copy of the certificates of insurance required by Section 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of any Construction Period. The certificates of insurance, and the coverages evidenced thereby, shall be in form and substance reasonably satisfactory to the Agency. The Company shall deliver to the Agency before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. At least thirty (30) days prior to the policy expiration, the Company shall furnish to the Agency and any other appropriate Person a new policy or policies of insurance or evidence that such policy or policies have been renewed or replaced or are no longer required by this Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement, including, but not limited to, true, accurate and complete copies of the policies of insurance required hereunder, as the Agency may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b), (c) and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7 Right of Agency to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails, beyond the expiration of any applicable notice and cure periods, (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, PILOT Payment,

assessment or other governmental charge required to be paid by Section 6.3 hereof (unless contested in accordance with the provisions of Section 6.3), (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.8(b) hereof), or (v) to pay any other amount or perform any act required to be paid or performed by the Company hereunder, the Agency may pay or cause to be paid such tax, PILOT Payment, assessment or other governmental charge, premium for such insurance or any such other payment, or may perform any such act. No such payment shall be made or act performed by the Agency until at least ten (10) days shall have elapsed since notice shall have been given by the Agency, and in the case of any tax, assessment or governmental charge or the amounts specified in clauses (i) and (iv) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement, unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency shall affect or impair any rights of the Agency hereunder arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon, from the date of payment of such amount, expense or cost by the Agency at a rate equal to two percent (2%) plus the Prime Rate, but in no event higher than the maximum lawful prevailing rate.

ARTICLE VII
DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.

(a) If the Facility or any part or component thereof shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:

- (i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the Facility;
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement, including, without limitation, the PILOT Payments (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated);
- (iii) the Company shall promptly give written notice thereof to the Agency;
- (iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be (A) paid to the Company or the Lender, as applicable, for the replacement, repair, rebuilding, restoration or relocation of the Facility as provided in Section 7.1(b) hereof or (B) applied pursuant to Section 7.1(e) hereof; and

(v) if the Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.1(b) hereof, this Lease Agreement shall be terminated at the option of the Agency and the provisions of Section 7.1(e) hereof shall apply.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such damage or destruction shall be subject to the following conditions:

(i) the Facility shall be in substantially the same condition and value as an operating entity as existed prior to the damage or destruction;

(ii) the Facility shall continue to constitute a "project" as such term is defined in the Act;

(iii) the Facility will be subject to no Liens, other than Permitted Encumbrances; and

(iv) any other conditions the Agency may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts and shall automatically become a part of the Facility as if the same were specifically provided herein.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such repair, replacement, rebuilding, restoration or relocation, the Company shall nonetheless complete the work, or cause the work to be completed pursuant to the terms of this Lease Agreement, and pay from its own moneys, or cause to be paid by such other party as may be obligated for payment that portion of the costs thereof in excess of such Net Proceeds. All such repairs, replacements, rebuilding, restoration or relocations made pursuant to this Section, whether or not requiring the expenditure of the Company's own money or moneys of any other person, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) If the Company shall not repair, replace, rebuild, restore or relocate the Facility, it shall be deemed to have exercised its option to terminate this Lease Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from insurance shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof and the balance shall be delivered to the Company. If an Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

Section 7.2 Condemnation.

(a) If title to or use of the Facility shall be taken by Condemnation (in whole or in part) at any time during the Lease Term:

(i) the Agency shall have no obligation to repair, replace, rebuild, restore or relocate the Facility or to acquire, by construction or otherwise, facilities of substantially the same nature as the Facility (“**Substitute Facilities**”);

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement including, without limitation, the PILOT Payments (whether or not the Facility is repaired, replaced, rebuilt, restored or relocated or Substitute Facilities are acquired);

(iii) the Company shall promptly give written notice thereof to the Agency;

(iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be (A) paid to the Company or the Lender, as applicable, for the replacement, repair, rebuilding, restoration or relocation of the Facility or acquisition of Substitute Facilities as provided in Section 7.2(b) hereof or (B) applied pursuant to Section 7.2(e) hereof; and

(v) if the Facility is not repaired, replaced, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Lease Agreement shall be terminated at the option of the Agency and the provisions of Section 7.2(e) hereof shall apply.

(b) Any repairs, replacements, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such Condemnation or acquisitions by the Company of Substitute Facilities shall be subject to the following conditions:

(i) the Facility or the Substitute Facilities shall be in substantially the same condition and value as an operating entity as existed prior to the Condemnation;

(ii) the Facility or the Substitute Facilities shall continue to constitute a “project” as such term is defined in the Act;

(iii) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances; and

(iv) any other conditions the Agency may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts and shall automatically become a part of the Facility as if the same were specifically described herein. Any Net Proceeds of a Condemnation not used to repair, replace, rebuild, restore, or relocate the Facility shall belong to the Company.

(d) In the event such Net Proceeds are not sufficient to pay in full the costs of such repair, replacement, rebuilding, restoration, relocation or acquisition of Substitute Facilities, the Company shall nonetheless complete, or cause to be completed, the work or the acquisition

pursuant to the terms of this Lease Agreement and pay from its own moneys, or cause to be paid by such other party as may be obligated for payment, that portion of the costs thereof in excess of such Net Proceeds. All such repairs, replacements, rebuilding, restoration, relocations and such acquisition of Substitute Facilities made pursuant to this Section, whether or not requiring the expenditure of the Company's own money or moneys of any other person, shall automatically become a part of the Facility as if the same were specifically described herein.

(e) If the Company shall not repair, replace, rebuild or restore the Facility or acquire Substitute Facilities, it shall be deemed to have exercised its option to terminate this Lease Agreement pursuant to Section 11.1 hereof. Any Net Proceeds derived from the Condemnation shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Agency shall have exercised its remedies under Section 10.2 hereof, such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof and any balance remaining thereafter shall belong to the Company.

Section 7.3 Condemnation of Company-Owned Property. The Company shall be entitled to the Net Proceeds of any casualty, damage or destruction insurance proceeds or any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

Section 7.4 Waiver of Real Property Law Section 227. The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

ARTICLE VIII SPECIAL COVENANTS

Section 8.1 Right to Inspect Facility. The Agency and its duly authorized agents shall have the right at all reasonable times on reasonable notice to inspect the Facility, including, without limitation, for the purpose of ascertaining the condition of the Environment at, on or in the vicinity of the Facility.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company), and employees (the "**Indemnified Parties**") shall not be liable for and agrees to protect, defend, indemnify, save, release and hold the Indemnified Parties harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements or expenses (including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements, incurred whether by reason of third party claims or to enforce the terms, conditions and provisions of this Lease Agreement) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Agency relating to, resulting from or arising out of: (i) loss or damage to Property or injury to or death of any and all Persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the

presence of any Person or Property on, in or about the Facility or the Land, (ii) the Project Work and the Agency's acquisition, owning, leasing and subleasing of the Facility, including, without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 5.2 of this Lease Agreement, and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Lease Agreement (including without limitation this Section) or any of the other documents delivered on the Closing Date by the Agency) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, (iii) the conditions of the Environment at, on or in the vicinity of the Facility, (iv) the Project Work or the operation or use of the Facility in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, management, production or Disposal of any Hazardous Substance or as a landfill or other waste disposal site, or for military, manufacturing or industrial purposes or for the commercial storage of petroleum or petroleum based products, except in compliance with all applicable Environmental Laws, (v) the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance or waste on, at or from the Facility, (vi) the failure promptly to undertake and diligently pursue to completion all necessary, appropriate and legally authorized investigative, containment, removal, clean-up and other remedial actions with respect to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility, required by any Environmental Law, (vii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the Project Work, the condition of the Facility or the ownership, use, sale, operation, conveyance or operation thereof in violation of any Environmental Law, (viii) a violation of any applicable Environmental Law, (ix) non-compliance with any Environmental Permit, (x) a material misrepresentation or inaccuracy in any representation or warranty or a material breach of or failure to perform any covenant made by the Company in this Lease Agreement, or (xi) the costs of any required or necessary investigation, assessment, testing, repair, cleanup, or detoxification of the Facility and the preparation of any closure or other required plans; provided that any such losses, damages, liabilities or expenses of the Agency are not incurred on account of and do not result from the gross negligence or intentional or willful wrongdoing of the Indemnified Parties. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of any of the Indemnified Parties, and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought, the payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges incurred by the Indemnified Parties, relating to the enforcement of the provisions herein specified. The liability of the Company to the Agency hereunder shall in no way be limited, abridged, impaired or otherwise affected by (i) any amendment or modification of any of

the Transaction Documents by or for the benefit of the Agency, the Company or any subsequent owners or users of the Facility, (ii) any extensions of time for payment or performance required by any of the Transaction Documents, (iii) the release of the Company or any other person from the performance or observance of any of the agreements, covenants, terms or conditions contained in any of the Transaction Documents by operation of law, either by the Agency's voluntary act or otherwise, (iv) the invalidity or unenforceability of any of the terms or provisions of the Transaction Documents, (v) any exculpatory provision contained in any of the Transaction Documents limiting the Agency's recourse to any other security or limiting the Agency's rights to a deficiency judgment against the Company, (vi) any investigation or inquiry conducted by or on the behalf of the Agency or any information which the Agency may have or obtain with respect to the condition of the Environment at, or ecological condition of, the Facility, (vii) the sale, assignment or foreclosure of any mortgage relating to all or any part of the Facility, but only with respect to a Release that has occurred prior to any such event, (viii) the sale, assignment, subleasing, transfer or conveyance of all or part of the Land or the Facility or the Company's interests and rights in, to, and under the Lease Agreement or the termination of the Lease Agreement, but only with respect to a Release that has occurred prior to any such event, (ix) the death or legal incapacity of the Company, (x) the release or discharge, in whole or in part, of the Company in any bankruptcy, insolvency, reorganization, arrangement, readjustment, composition, liquidation or similar proceeding, or (xi) any other circumstances which might otherwise constitute a legal or equitable release or discharge, in whole or in part, of the Company under the Lease Agreement, or any other Transaction Document.

(c) In the event of any claim against the Indemnified Parties by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.3 Company to Maintain Its Existence. The Company covenants and agrees that at all times during the Lease Term, it will (i) maintain its existence, (ii) continue to be an entity subject to service of process in the State and either organized under the laws of the State, or organized under the laws of any other state of the United States and duly qualified to do business as a foreign entity in the State, (iii) not liquidate, wind-up or dissolve or otherwise dispose of all or substantially all of its property, business or assets remaining after the execution and delivery of this Lease Agreement, (iv) not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it, except with consent of the Agency, which consent shall not be unreasonably withheld or delayed or conditioned, and (v) not change, directly or indirectly, more than 49% of the ownership or control of the Company or sell or transfer, directly or indirectly, more than 49% of the equity interests in the Company, whether accomplished in a single transaction or in a series of related or unrelated transactions, except with consent of the Agency, which consent shall not be unreasonably withheld or delayed or conditioned. In connection with an equity financing, the Company may request the Agency's consent to the transfer of ownership interest in the Company, and such consent shall not be unreasonably withheld, delayed or conditioned.

Section 8.4 Qualification in State. The Company throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.5 Agreement to File Annual Statements and Provide Information. The Company shall file with the NYSDTF an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) of the GML as provided in Section 5.2(g) hereof. The Company shall submit a copy of such annual statement to the Agency at the time of filing with NYSDTF. The Company shall also provide the Agency with the information necessary for the Agency to comply with Section 874(9) of the GML. Annually, the Company shall provide the Agency with a certified statement and documentation (i) enumerating the FTE jobs, by category, retained and/or created at the Facility as a result of the Agency's financial assistance and (ii) indicating the fringe benefits and salary averages or ranges for such categories of FTE jobs created and/or retained. The Company further agrees to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the Act or the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, each as amended from time to time, or any other reports required by the New York State Authority Budget Office or the Office of the State Comptroller or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency. The Company shall cause any and all sublessees at the Facility to comply with the requirements of this Section 8.5 by requiring each such sublessee to enter into a Tenant Agency Compliance Agreement.

Section 8.6 Books of Record and Account; Financial Statements. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and financial affairs of the Company.

Section 8.7 Compliance with Orders, Ordinances, Etc..

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee, tenant or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to the Project Work, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction over the Facility or any part thereof, or of the Project Work, or of any use, manner of use or condition of the Facility or any part thereof or of any companies or associations insuring the premises.

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company that by failure to comply with such requirement or requirements, the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be

satisfactory to the Agency. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts not to cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency.

Section 8.8 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) above, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency shall notify the Company in writing that by nonpayment of any such item or items, the Facility or any part thereof may be subject to loss or forfeiture. In the event of such notice the Company shall promptly secure payment of all such unpaid items by filing a bond, in form and substance satisfactory to the Agency, thereby causing such Lien to be removed, or by taking such other actions as may be satisfactory to the Agency to protect its interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

Section 8.9 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to all depreciation deductions with respect to any depreciable property comprising a part of the Facility and to any investment credit with respect to any part of the Facility.

Section 8.10 Employment Opportunities; Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which the Company is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300), as superseded by the Workforce Innovation and Opportunity Act (PL. 113-128), in which the Facility is located (collectively, the "**Referral Agencies**"). The Company also agrees, and shall cause any and all sublessees to agree, that they will, where practicable, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies.

Section 8.11 Employment at the Facility. The Company hereby agrees to create and maintain at all times or cause the Sublessee to create and maintain at all times at the Facility: zero (0) full time equivalent employees throughout the Lease Term, calculated on the basis of 35 hours per week who are employees of the Company or any subsidiary or affiliates of the Company, or any consultants, contractors or subcontractors of the Company, or any subsidiary or

affiliates of the Company, whose place of employment or workplace is located at the Facility (including the full time equivalent employees of all tenants at the Facility) (“FTE”).

ARTICLE IX
RELEASE OF CERTAIN LAND; ASSIGNMENTS AND SUBLEASING

Section 9.1 Restriction on Sale of Facility; Release of Certain Land.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof, or any of its rights under this Lease Agreement, without the prior written consent of the Company.

(b) The Agency and the Company from time to time may release from the provisions of this Lease Agreement and the leasehold estate created hereby any part of, or interest in, the Land which is not necessary, desirable or useful for the Facility. In such event, the Agency, at the Company’s sole cost and expense, shall execute and deliver any and all instruments necessary or appropriate so to release such part of, or interest in, the Land. As a condition to such release, the Agency shall be provided with a copy of the instrument transferring such title or interest in such Land, an instrument survey of the Land to be conveyed, together with a certificate of an Authorized Representative of the Company stating that there is then no Event of Default under this Lease Agreement and that such part of, or interest in, the Land is not necessary, desirable or useful for the Facility.

(c) No conveyance of any part of, or interest in, the Land effected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the PILOT Payments.

Section 9.2 Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company, may remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility and will not cause the Facility to cease to constitute a “project” under the Act.

(b) Upon the request of the Company, the Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including attorneys’ fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution of the PILOT Payments or any other amounts payable by it under this Lease Agreement.

Section 9.3 Assignment and Subleasing.

(a) This Lease Agreement may not be assigned, in whole or in part, and the Facility may not be subleased, in whole or in part, without the prior written consent of the Agency, in each instance, which consent shall not be unreasonably withheld or delayed, but shall be subject to the dates of the Agency's board meetings, and which consent to a sublease may be fully and effectively given by the execution and delivery of a Tenant Agency Compliance Agreement by an Authorized Representative of the Agency in form and substance reasonably satisfactory to the Agency. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

(i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder unless the Agency consents thereto, which consent shall not be unreasonably withheld or delayed subject to the dates of the Agency's board meetings and which consent shall be conditioned upon the Agency being indemnified and held harmless to its reasonable satisfaction;

(ii) the assignee or sublessee (except in the case of a true sublessee in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;

(iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment or sublease and the instrument of assumption;

(iv) neither the validity nor the enforceability of the Lease Agreement shall be adversely affected thereby;

(v) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act, and, without limiting the generality of the foregoing, no assignment or sublease shall cause the Facility to be used in violation of Section 862(2)(a) of the Act and no assignment or sublease shall cause the Facility to be occupied by a sublessee in violation of Section 862(1) of the Act; and

(vi) any sublessee will execute and deliver a Tenant Agency Compliance Agreement, in the form and substance reasonably satisfactory to the Agency.

(b) If the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 9.3, the Company at its sole cost and expense shall furnish the Agency with opinions, in form and substance satisfactory to the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii), and (iv) above.

(c) In accordance with Section 862(1) of the Act, the Facility shall not be occupied by a sublessee whose tenancy would result in the removal of a facility or plant of the proposed sublessee from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of such sublessee located within the State; provided, however, that neither restriction shall apply if the Agency shall determine:

- (i) that such occupation of the Facility is reasonably necessary to discourage the proposed sublessee from removing such other plant or facility to a location outside the State, or
- (ii) that such occupation of the Facility is reasonably necessary to preserve the competitive position of the proposed sublessee in its respective industry.

Section 9.4 Merger of Agency.

(a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or the transfer of the Agency's interest in the entire Facility to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility and to continue the tax benefits contemplated by the Transaction Documents, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company and shall, upon request, furnish to the Company, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.4(a) hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company may reasonably request.

ARTICLE X
EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

- (a) The following shall each be "Events of Default" under this Lease Agreement:
 - (i) the failure by the Company to pay or cause to be paid, on the date due, the amounts specified to be paid pursuant to Section 4.3(a) and (b) hereof;
 - (ii) the failure by the Company to observe and perform any covenant contained in Sections 2.2, (f) or (i), 5.2, 6.3, 6.4, 6.5, 8.2, 9.3, and 10.4 and Article XIII hereof;
 - (iii) the failure by the Company to observe and perform any covenant contained in Sections 2.2(e), 8.4, 8.5, and 10.6 hereof and such default shall continue for a period of fifteen (15) days after notice of the same is received by the Company from the Agency;
 - (iv) the failure by the Company to pay or cause to be paid PILOT Payments or the Recapture Benefits, in each case on the dates due;

- (v) the occurrence and continuation of a Recapture Event;
- (vi) any representation or warranty of the Company herein, in any of the Company Documents or in the Project Application Information shall prove to have been false or misleading in any material respect;
- (vii) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii), (iii) and (iv)) for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, has been given to the Company by the Agency (or in the event such default cannot be cured within such thirty (30) day period, the Company shall fail to commence to cure such default within said thirty (30) day period and diligently prosecute the same to cure within ninety (90) days after notice from the Agency to the Company;
- (viii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within thirty (30) days any execution, garnishment, judgment or attachment of such consequence as may impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in bankruptcy or any proceeding under any other insolvency law against the Company (as the debtor), wherein a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor, or such case or proceeding is consented to by the Company or remains undismissed for forty (40) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;
- (ix) an Event of Default under the Mortgage, if any, shall have occurred and be continuing;
- (x) a default by any tenant under its respective Tenant Agency Compliance Agreement shall have occurred and be continuing beyond any applicable notice and cure periods; or
- (xi) a default under the Ground Lease shall have occurred and be continuing beyond any applicable notice and cure periods.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 3.4 and 6.1 of this Lease Agreement, and if such party shall give notice and full particulars of such

force majeure in writing to the other party, within a reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuation of the inability, which shall include a reasonable time for the removal of the effect thereof. The term “force majeure” as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions or officials or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may take, to the extent permitted by law, any one or more of the following remedial steps:

(i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 4.3(a) and (b) hereof, (B) all unpaid and past due PILOT Payments, (C) all due and owing Recapture Benefits, and (D) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred and be continuing, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency;

(ii) terminate this Lease Agreement and the Company Lease, reconvey the Equipment to the Company and terminate the Sales Tax Exemption authorization. The Agency shall have the right to execute appropriate lease termination documents with respect to the Facility and to place the same on record in the Suffolk County Clerk's office, at the sole cost and expense of the Company and in such event the Company waives delivery and acceptance of such lease termination documents and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such lease termination documents; or

(iii) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, and to enforce the obligations, agreements and covenants of the Company under this Lease Agreement.

(b) No action taken pursuant to this Section 10.2 (including termination of the Lease Agreement) shall relieve the Company from its obligation to make all payments required by Section 4.3 hereof or due and owing PILOT Payments or Recapture Benefits.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right and power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease Agreement.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.6 Certificate of No Default. The Company shall deliver to the Agency each year no later than January 15th, a certificate signed by an Authorized Representative of the Company stating that the Company is not in default under this Lease Agreement and that no Event of Default exists under this Lease Agreement or any other Company Document. Such certificate shall also contain all information required under Section 8.5 hereof.

ARTICLE XI
EARLY TERMINATION OF LEASE AGREEMENT
OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Lease Agreement at any time upon filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and stating the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than forty five (45) nor more than

90 days from the date such certificate is filed) and upon compliance with the requirements set forth in Section 11.2 hereof.

Section 11.2 Conditions to Termination of Lease Agreement. In the event of the termination or expiration of this Lease Agreement in accordance with the provisions of Sections 4.2, 10.2 or 11.1 hereof, the Company shall make or cause to be made the following payments:

(a) To the Agency or the Taxing Authorities, as appropriate pursuant to Section 5.1 hereof: all PILOT Payments due and payable hereunder as of the date of the termination or expiration of this Lease Agreement;

(b) To the Agency: the purchase price with respect to the Equipment of one dollar (\$1.00);

(c) To the Agency: all amounts due and payable under Section 5.4 hereof;

(d) To the Agency: an amount certified by the Agency to be sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents; and

(e) To the appropriate Person: an amount sufficient to pay all other fees, expenses or charges, if any, due and payable or to become due and payable under the Company Documents.

Section 11.3 Conveyance on Termination. At the closing of any expiration or termination of the Lease Agreement, the Agency shall, upon receipt of the amounts payable pursuant to Section 11.2 hereof, deliver to the Company all necessary documents (i) to terminate this Lease Agreement and the Company Lease and to convey the Equipment to the Company, subject in each case only to the following: (A) any Liens to which leasehold estate or title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances, and (D) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default hereunder; and (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility (but not including any Unassigned Rights). At the closing of any expiration or termination of the Lease Agreement, and unless otherwise waived by the Agency, as a condition to such termination or expiration, the Company shall request each Lender to release the Agency from any Mortgage and any other Loan Documents to which it is a party in writing and cause such releases to be recorded as applicable.

ARTICLE XII LENDER PROVISIONS

Section 12.1 Subordination of Lease Agreement. This Lease Agreement and any and all modifications, amendments, renewals and extensions thereof is subject and subordinate to any Mortgage which may be granted by the Agency and the Company on the Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 12.2 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall at the request of, and at the sole cost and expense of, the Company (i) mortgage its interest in the Facility, and (ii) pledge and assign its rights to and interest in this Lease Agreement (other than Unassigned Rights) to the Lender as security for the payment of the principal of and interest on the Loan, in each case in accordance with the provisions attached hereto as Exhibit D and upon such other terms and conditions as the Agency may reasonably require. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment, continue to run to the Agency for its benefit.

Section 12.3 Pledge of Company's Interest to Lender. The Company shall have the right to pledge and assign its rights to and interest in this Lease Agreement and the Plans and Specifications to any Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to any such pledge and assignment by the Company.

Section 12.4 Making of Loans; Disbursement of Loan Proceeds. The Agency acknowledges that the Company may request one or more Lenders to make one or more loans to finance and refinance the costs of the acquisition of the Facility and/or the Project Work or to reimburse the Company for the cost of acquiring the Facility and/or the Project Work (the "**Loan**"). Proceeds of such Loan shall be disbursed by such Lender in accordance with the provisions of the Mortgage or other related documentation applicable to such Loan.

Provided that the Agency shall have received the notice of the name and address of a Lender, the Agency agrees that simultaneously with its giving of any notice under this Lease Agreement (each a "**Notice**") it will send a copy of such Notice to each Lender. Each Notice shall be sent to each Lender in the manner provided herein at the address provided to the Agency by each Lender for such purpose. Each such Lender may change such address from time to time by written notice to the Agency in accordance herewith. Subject to compliance with such terms and conditions as the Agency may reasonably require, the Agency shall reasonably cooperate with the Company in connection with the granting or modification by the Company of any Mortgage. Such cooperation shall include, without limitation, the execution and delivery of such documents and instruments in connection with a Mortgage as the Company or the Lender may reasonably request (the "**Loan Documents**"), provided that such documents and instruments shall contain the language set forth in Exhibit D attached hereto and made a part hereof. The Company shall perform or cause to be performed for and on behalf of the Agency, and at the Company's sole cost and expense, each and every obligation of the Agency under and pursuant to such instruments.

Section 12.5 References to Lender, Loan or Mortgage. All references herein to Lender, Loan or Mortgage or other similar words, whether in the singular or the plural, may be in anticipation of future Loans to be made by future Lenders. Such references shall only be effective if such Loans have been made and are still outstanding. If such Loans are never made or have been repaid, such references shall not be of any force or effect.

ARTICLE XIII
ENVIRONMENTAL MATTERS

Section 13.1 Environmental Representations of the Company. Except as otherwise shown on Exhibit H attached hereto, the Company hereby represents and warrants to the Agency that:

(a) Neither the Facility nor, to the best of Company's knowledge, any property adjacent to or within the immediate vicinity of the Facility, is being or has been used in violation of any applicable Environmental Law for the storage, treatment, generation, transportation, processing, handling, production or disposal of any Hazardous Substance or as a landfill or other waste management or disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum based products.

(b) Underground storage tanks are not and have not been located on the Facility.

(c) The soil, subsoil, bedrock, surface water and groundwater of the Facility are free of Hazardous Substances, in violation of Environmental Law, other than any such substances that occur naturally.

(d) There has been no Release or threat of a Release of any Hazardous Substance in violation of any applicable law on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility which through soil, subsoil, bedrock, surface water or groundwater migration could come to be located on or at the Facility, and the Company has not received any form of notice or inquiry from any federal, state or local governmental agency or authority, any operator, tenant, subtenant, licensee or occupant of the Facility or any property adjacent to or within the immediate vicinity of the Facility or any other person with regard to a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility in violation of any applicable law.

(e) All Environmental Permits necessary for the Project Work and the ownership, use or operation of the Facility have been obtained and are in full force and effect.

(f) No event has occurred with respect to the Facility which, with the passage of time or the giving of notice, or both, would constitute a violation of or non-compliance with any applicable Environmental Law or Environmental Permit.

(g) There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future construction, renovation, equipping, ownership, use, operation, sale, transfer or conveyance of the Facility which require any change in the present condition of the Facility or any work, repairs, construction, containment, clean up, investigations, studies, removal or remedial action or capital expenditures in order for the Facility to be in compliance with any applicable Environmental Law or Environmental Permit.

(h) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money

damages, injunctive relief, remedial action or remedy that arise out of, relate to or result from (i) conditions of the Environment at, on or in the vicinity of the Facility, (ii) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit with respect to the Facility, (iii) the presence of any Hazardous Substance or a Release or the threat of a Release of any Hazardous Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility or (iv) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Facility, the Project Work or the ownership, use, operation, sale, transfer or conveyance of the Facility.

(i) The Environmental Phase I Site Assessment, dated February 2017, prepared by TRC Environmental Corporation, is true, accurate and complete in all respects, and no other report or discussion with respect to the Facility has been prepared by or for the Company, or any affiliate of the Company, or which is within the control or possession of the Company, or any affiliate of the Company, with respect to the environmental circumstances and conditions at, below or about the Facility.

Section 13.2 Environmental Covenants of the Company. The Company hereby covenants and agrees with the Agency as follows:

(a) The Company shall perform the Project Work and use, operate and manage the Facility in accordance with all applicable Environmental Laws and Environmental Permits, and shall cause all operators, tenants, subtenants, licensees and occupants of the Facility to perform the Project Work and to use, operate and manage the Facility in accordance with any applicable Environmental Laws and Environmental Permits, and shall not cause, allow or permit the Facility or any part thereof to be operated or used for the storage, treatment, generation, transportation, processing, handling, production, management or Disposal of any Hazardous Substances other than in accordance with all applicable Environmental Laws and Environmental Permits.

(b) The Company shall obtain and comply with, and shall cause all contractors, subcontractors, operators, tenants, subtenants, licensees and occupants of the Facility to obtain and comply with, all Environmental Permits, if any.

(c) The Company shall not cause or permit any change to be made in the present or intended Project Work or use or operation of the Facility which would (i) involve the storage, treatment, generation, transportation, processing, handling, management, production or disposal of any Hazardous Substance other than in accordance with any applicable Environmental Law, or the Project Work or use or operation of the Facility as a landfill or waste management or disposal site or for manufacturing or industrial purposes or for the storage of petroleum or petroleum based products other than in accordance with any applicable Environmental Law, (ii) violate any applicable Environmental Law, (iii) constitute a violation or non-compliance with any Environmental Permit or (iv) increase the risk of a Release of any Hazardous Substance.

(d) The Company shall promptly provide the Agency with a copy of all notifications which the Company gives or receives with respect to conditions of the Environment at or in the vicinity of the Facility, any past or present Release or the threat of a Release of any Hazardous

Substance on, at or from the Facility or any property adjacent to or within the immediate vicinity of the Facility. If the Company receives or becomes aware of any such notification which is not in writing or otherwise capable of being copied, the Company shall promptly advise the Agency of such verbal, telephonic or electronic notification and confirm such notice in writing. Furthermore, upon the Company's discovery thereof, the Company shall promptly advise the Agency in writing of: (i) the presence of any Hazardous Substance on, under or about the Facility of which the Agency has not previously been advised in writing; (ii) any remedial action taken by, or on behalf of, the Company in response to any Hazardous Substance on, under or about the Facility or to any environmental proceedings of which the Company has not previously been advised in writing; and (iii) the occurrence or condition on any real property adjoining or in the vicinity of the Facility that could reasonably be expected to cause the Facility or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Facility under any Environmental Law. The Company shall also provide the Agency with copies of all reports, analyses, notices, licenses, approvals, orders, correspondences or other written materials in its possession or control relating to the condition of the Environment at the Facility or real property or bodies of water adjoining or in the vicinity of the Facility or environmental proceedings promptly upon receipt, completion or delivery of such materials.

(e) The Company shall undertake and complete all investigations, studies, sampling and testing and all removal or remedial actions necessary to contain, remove and clean up all Hazardous Substances that are or may become present at the Facility and are required to be removed and/or remediated in accordance with all applicable Environmental Laws and all Environmental Permits. All remedial work shall be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, (ii) pursuant to a detailed written plan for the remedial work approved by any public or private agencies or persons with a legal or contractual right to such approval, (iii) with such insurance coverage pertaining to liabilities arising out of the remedial work as is then customarily maintained with respect to such activities, and (iv) only following receipt of any required permits, licenses or approvals. In addition, the Company shall submit, or cause to be submitted, to the Agency, promptly upon receipt or preparation, copies of any and all reports, studies, analyses, correspondence, governmental comments or approvals, proposed removal or other remedial work contracts and similar information prepared or received by or on behalf of the Company in connection with any remedial work, or Hazardous Substances relating to the Facility. All costs and expenses of such remedial work shall be paid by or on behalf of the Company, including, without limitation, the charges of the remedial work contractors and the consulting environmental engineer, any taxes or penalties assessed in connection with the remedial work and the Agency's out-of-pocket costs incurred in connection with monitoring or review of such remedial work. The Agency shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any environmental proceedings.

(f) If at any time the Agency obtains any notice or information that the Company or the Facility, or the use or operation thereof or the Project Work may be in violation of an Environmental Law or in non-compliance with any Environmental Permit or standard, the Agency may require that a full or supplemental environmental inspection and audit report with respect to the Facility of a scope and level of detail reasonably satisfactory to the Agency be prepared by a professional environmental engineer or other qualified environmental scientist

acceptable to the Agency, at the Company's sole cost and expense. Said audit may, but is not required to or limited to, include a physical inspection of the Facility, a records search, a visual inspection of any property adjacent to or within the immediate vicinity of the Facility, personnel interviews, review of all Environmental Permits and the conducting of scientific testing. If necessary to determine whether a violation of an Environmental Law exists, such inspection shall also include subsurface testing for the presence of Hazardous Substances in the soil, subsoil, bedrock, surface water and/or groundwater. If said audit report indicates the presence of any Hazardous Substance or a Release or Disposal or the threat of a Release or Disposal of any Hazardous Substance on, at or from the Facility in violation of any applicable law, the Company shall promptly undertake and diligently pursue to completion all necessary, appropriate investigative, containment, removal, clean-up and other remedial actions required by any Environmental Law, in accordance with Section 13.2(e) above. The Company hereby consents to the Agency notifying any party under such circumstances of the availability of any or all of the environmental reports and the information contained therein. The Company further agrees that the Agency may disclose such environmental reports to any governmental agency or authority if they reasonably believe that they are required to disclose any matter contained therein to such agency or authority; provided that the Agency shall give the Company at least forty-eight (48) hours prior written notice before so doing. The Company acknowledges that the Agency cannot control or otherwise assure the truthfulness or accuracy of the environmental reports, and that the release of the environmental reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Facility may have a material and adverse effect upon the amount which a party may bid at such sale. The Company agrees that the Agency shall not have any liability whatsoever as a result of delivering any or all of the environmental reports or any information contained therein to any third party if done in good faith, and the Company hereby releases and forever discharges the Agency from any and all claims, damages, or causes of action arising out of, connected with or incidental to the delivery of environmental reports.

Section 13.3 Survival Provision. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and indemnifications of the Company contained in this Article XIII shall survive any termination, conveyance, assignment, subleasing or defeasance of any right, title or interest of the Company in and to the Facility or in, to or under the Lease Agreement.

ARTICLE XIV MISCELLANEOUS

Section 14.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication) addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 2nd Floor
Farmingville, New York 11738
Attention: Chief Executive Officer

With a copy to:

Town of Brookhaven, Town Attorney's Office
1 Independence Hill, 3rd Floor
Farmingville, New York 11738
Attention: Annette Eaderesto, Esq.

To the Company:

Shoreham Solar Commons, LLC
1 South Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attention: General Counsel

With a copy to:

Nixon Peabody LLP
50 Jericho Quadrangle, Suite 300
Jericho, New York 11753
Attention: Denise Pursley, Esq.

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the third Business Day after mailing with respect to certified mail and one Business Day after mailing with respect to overnight mail.

Copies of all notices given either to the Agency or to the Company shall also be sent to any Lender, if such Lender shall have delivered written instructions to the Agency and the Company with the address of such Lender pursuant to Section 12.4 hereof.

Section 14.2 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 14.3 Severability. In the event any provision of this Lease Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or (except pursuant to Section 10.2 hereof) terminated except in a writing executed by the parties hereto.

Section 14.5 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles. Any actions, suits or proceedings arising under or by virtue of this Lease Agreement shall be commenced, prosecuted or maintained by the Company solely in the State of New York, County of Suffolk, and the Company consents to the jurisdiction of the courts of said State and of the United States sitting within said County in any action, suit or proceedings commenced, prosecuted or maintained under or in connection with this Lease Agreement.

Section 14.7 List of Additional Equipment; Further Assurances. Upon the Completion Date with respect to the Facility and the installation of all of the Equipment therein, the Company shall prepare and deliver to the Agency, a schedule listing all of the Equipment not previously described in this Lease Agreement. If requested by the Agency, the Company shall thereafter furnish to the Agency, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein or in the aforesaid schedule.

Section 14.8 Survival of Obligations. This Lease Agreement shall survive the performance of the obligations of the Company to make the payments required by Section 4.3, and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement.

Section 14.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

Section 14.10 Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Lease Agreement or the Facility or any matters whatsoever arising out of or in any way connected with this Lease Agreement.

Section 14.11 Equipment Lease Agreement and Equipment Agreement Recapture Agreement. The rights and obligations accruing under the Equipment Lease Agreement and the Equipment Recapture Agreement prior to the effective date of this Lease Agreement shall survive the execution and delivery of this Lease Agreement.

Section 14.12 No Liability.

(a) Neither the Agency, nor any member, officer, agent, servant or employee of the Agency, nor a successor in interest to any of the foregoing, shall be under any personal liability with respect to any of the provisions of this Lease Agreement, the Company Lease or any other Company Document or any matter arising out of or in connection with this Lease Agreement, the Company Lease or any other Company Document, or the Company's occupancy or use of the Facility, and in the event of any breach or default with respect to the Agency's obligations under this Lease Agreement or Company Lease or any claim arising out of or in connection with this Lease Agreement or the Company Lease or the Company's occupancy or use of the Facility, the Company's sole remedy shall be an action or proceeding to enforce such

obligation, or for specific performance, injunction or declaratory judgment, and the Company hereby waives any right to recover from, and releases, the Agency, its members, officers, agents and employees from any and all monetary damages, whether known, unknown, foreseeable, unforeseeable, ordinary, extraordinary, compensatory or punitive, and in no event shall the Company attempt to secure any personal judgment against the Agency or any of the Agency's members, officers, agents or employees, or successors thereto.

(b) The approval, consent, determination, opinion or judgment of the Agency or any agent or employee of the Agency shall not be construed as such person's endorsement, warranty or guarantee of the matter at issue or the manner or means of accomplishing same or the benefit thereof; in no event shall actions of such party replace, or act as or on behalf of, the requesting parties, its agents, servants or employees.

Section 14.13 This Lease Agreement shall not be recorded by either party hereto. The Agency, at the sole expense and effort of the Company, shall cause a memorandum of lease with respect hereto to be recorded in the office of the Suffolk County Clerk.

(Remainder of Page Intentionally Left Blank - Signature Pages Follow)

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their duly authorized representatives, all as of the day and year first above written.

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

By: *Lisa MG Mulligan*
Name: Lisa MG Mulligan
Title: Chief Executive Officer

STATE OF NEW YORK)
 : SS.:
COUNTY OF NASSAU)

On the 28th day of February in the year 2017, before me, the undersigned, personally appeared **Lisa MG Mulligan**, 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 she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

ELIZABETH A. WOOD
Notary Public, State of New York
Registration # 01WO6103025
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires 12/15/2019

Elizabeth A Wood
Notary Public

IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their duly authorized representatives, all as of the day and year first above written.

SHOREHAM SOLAR COMMONS, LLC

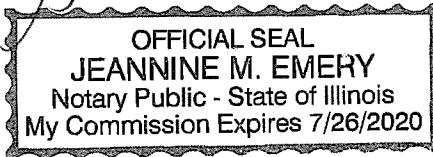


By: Bryan Schueler
 Name: Bryan Schueler
 Title: Vice President

STATE OF ILLINOIS)
) ss:
 COUNTY OF COOK)

On the 27 day of February in the year 2017, before me, the undersigned, personally appeared BRYAN SCHUELER 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/she/they 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, and that such individual acted, executed the instrument, and that such individual made such appearance before the undersigned in CHICAGO, IL [insert city or political subdivision and state or county or other place acknowledgment taken].

Jeannine Emery
 NOTARY PUBLIC



INVENERGY SOLAR LLC, a Delaware limited liability company, organized and existing under the laws of the state of Delaware and authorized to transact business in the State of New York, having an office at 1 South Wacker Drive, Suite 1800, Chicago, Illinois 60606 (“**Guarantor**”), hereby absolutely, irrevocably and unconditionally, guarantees to the Town of Brookhaven Industrial Development Agency (the “**Agency**”), and its successors and assigns, the full and prompt performance and observance of all the covenants, conditions and agreements of SHOREHAM SOLAR COMMONS LLC (the “**Company**”), and its successors and assigns, under Article V of the foregoing the Lease and Project Agreement, dated as of February 1, 2017 (the “**Lease Agreement**”), by and between the Town of Brookhaven Industrial Development Agency and the Company, to be performed or observed by the Company, including the payment of all PILOT Payments and Recaptured Benefits, as and when due and payable (collectively, “**Obligations**”), together with all costs of collection, including legal fees and expenses throughout all appeals, without requiring any notice of non-payment, non-performance, non-observance, proof, notice, or demand, whereby to charge any the Guarantor therefor, all of which are hereby expressly waived. The Guarantor agrees that the validity of this guaranty and its obligations hereunder shall not be terminated, affected or impaired by reason of the assertion by Agency against the Company of any of the rights or remedies reserved to Agency pursuant to the provisions of the Lease Agreement or otherwise. The Guarantor, absolutely, irrevocably and unconditionally, agrees that upon any default by the Company in the performance or observance of any of the Obligations, the Guarantor shall promptly perform and observe same. Each and every default in the Obligations shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder by Agency as each cause of action arises. The obligations under this Guaranty shall remain in full force and effect, and shall not be affected, modified or impaired by any state of facts or the happening from time to time of any event. The provisions of Article XIV of the Lease Agreement shall apply to this guaranty as if the Guarantor were the Company thereunder.

(Remainder of Page Intentionally Left Blank)

INVENERGY SOLAR LLC,
a Delaware limited liability company

By: *Bryan Schueler*
Name: Bryan Schueler
Title: Vice President

STATE OF ILLINOIS)
) ss:
COUNTY OF COOK)

On the 27 day of February in the year 2017, before me, the undersigned, personally appeared BRYAN SCHUELER, 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/she/they 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, and that such individual acted, executed the instrument, and that such individual made such appearance before the undersigned in CHICAGO, IL [insert city or political subdivision and state or county or other place acknowledgment taken].

Jeannine Emery
NOTARY PUBLIC

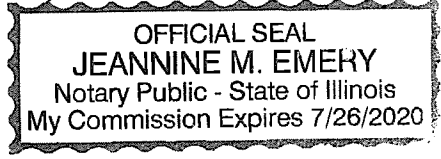


EXHIBIT A

Legal Description of Real Property

Issued By:

CHICAGO TITLE INSURANCE COMPANY

Schedule A (Continued)

No. 1716-38022

The land referred to in this Commitment is described as follows:

District 0200 Section 148.00 Block 02.00 Lot 006.000

ALL that certain plot, piece or parcel of land, situate, lying and being at Shoreham, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of East Street (a/k/a East Avenue - Not Open) which point is South 06 degrees 55 minutes 20 seconds West, 1424.62 feet from the corner formed by the intersection of the westerly side of East Street with the southerly side of Cooper Street (a/k/a Ampere street);

RUNNING THENCE along the westerly side of East Street, South 06 degrees 55 minutes 20 seconds West, 1426.52 feet to the northerly line of Map of Randall Estates, Sec. 1 (File No. 4570);

THENCE along said map line, North 83 degrees 04 minutes 40 seconds West, 871.08 feet;

THENCE North 06 degrees 55 minutes 20 seconds East, 394.00 feet;

THENCE North 83 degrees 29 minutes 20 seconds West, 779.19 feet;

THENCE South 06 degrees 55 minutes 20 seconds West, 70.00 feet;

THENCE North 83 degrees 30 minutes 10 seconds West, 200.06 feet to a point on the easterly side of Randall Road;

THENCE the following courses and distances along Randall Road;

1) North 06 degrees 55 minutes 50 seconds West, 81.97 feet;

2) North 02 degrees 44 minutes 40 seconds West, 170.15 feet;

THENCE South 86 degrees 16 minutes 40 seconds East 409.90 feet;

THENCE North 06 degrees 59 minutes 10 seconds, East 835.17 feet;

THENCE South 82 degrees 53 minutes 50 seconds East 1489.83 feet to the westerly side of East Street the point or place of BEGINNING.

District 0200 Section 126.00 Block 0.200 Lot 002.000

ALL that certain plot, piece or parcel of land, situate, lying and being at Shoreham, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Cooper Avenue a/k/a Ampere Street distant 625.50 feet easterly from the corner formed by the intersection of the southerly side of Cooper Street with the easterly side of Randall Road (as widened);

02/24/2017 9:24:13 AM E-Hoch



Issued By:

CHICAGO TITLE INSURANCE COMPANY

Schedule A (Continued)

No. 1716-38022

RUNNING THENCE North 05 degrees 57 minutes 50 seconds East along the westerly line of the parcel herein described 25.00 feet to the southerly side of Cooper Street (old line);

1) South 86 degrees 35 minutes 20 seconds East 470.32 feet;

2) South 83 degrees 00 minutes 40 seconds East, 929.54 feet;

THENCE along land now or formerly of Antone Doroski, et al:

1) South 06 degrees 55 minutes 20 seconds West, 225 feet;

2) South 83 degrees 00 minutes 40 seconds East 225 feet to the westerly side of East Street (not open);

THENCE along the westerly side of East Street, South 6 degrees 55 minutes 20 seconds West, 1199.62 feet;

THENCE North 82 degrees 53 minutes 50 seconds West along land now or formerly of Frank J. Doroski, 1489.83 feet;

THENCE North 06 degrees 59 minutes 10 seconds East along land now or formerly of Mohrmann & Rosenthal, 294.66 feet;

THENCE along land now or formerly of Angela Caruso:

1) North 05 degrees 57 minutes 50 seconds East, 375 feet;

2) North 84 degrees 02 minutes 10 seconds West 116.10 feet;

THENCE North 05 degrees 57 minutes 50 seconds East along land now or formerly of Kjellander and now or formerly of Maloney 699.90 feet to the southerly side of Cooper Street (as widened) and the point or place of BEGINNING.

District 0200 Section 127.00 Block 01.00 Lot 003.000

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Brookhaven at Shoreham, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a concrete monument set at the intersection of the southerly line of Cooper Street; Thence South 82 degrees 53 minutes 50 seconds East, 761.80 feet to land formerly of Shoreham Farms, Inc.;

THENCE along said land formerly of Shoreham Farms, Inc. and parallel to said easterly line of East Street, South 06 degrees 55 minutes 20 seconds West, 2852.60 MEAS 2858.94 DEED feet to a concrete monument;

THENCE along other land formerly of said Shoreham Farms, Inc. North 83 degrees 04 minutes 40 seconds; West, 761.80 feet to a point on the easterly line of East Street;

02/24/2017 9:24:12 AM E-Hoch



Issued By:

CHICAGO TITLE INSURANCE COMPANY

Schedule A (Continued)

No. 1716-38022

THENCE along said easterly line of East Street North 06 degrees 55 minutes 20 seconds East 2851.08 MEAS
2858.94 DEED feet to the point of BEGINNING.

District 0200 Section 127.00 Block 01.00 Lot 006.000 (East Street)

ALL that certain plot, piece or parcel of land, situate, lying and being at Shoreham, Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Cooper Street where the easterly side of the within described premises known as East Street (not open) intersects the southerly side of Cooper Street;

RUNNING THENCE South 06 degrees 55 minutes 20 seconds West 2851.08 feet to the northerly side of East Street as shown on Map of Randall Estates, Section One, filed February 7, 1986 as Map No. 4570;

THENCE North 83 degrees 04 minutes 40 seconds West along the northerly side of said map and the northerly portion of East Street (as opened) a distance of 50.00 feet;

THENCE North 06 degrees 55 minutes 20 seconds East 2851.14 feet to the Southerly side of Cooper Street;

THENCE South 83 degrees 00 minutes 40 seconds East along the southerly side of Cooper Street 50.00 feet to the point or place of BEGINNING.

District 0200 Section 148.00 Block 02.00 Lot 005.000

ALL that certain plot, piece or parcel of land, situate, lying and being at Shoreham, Town of Brookhaven, County of Suffolk and State of New York, being more particularly bounded and described as follows:

BEGINNING at a point on the easterly side of Randall Road located at the northwesterly corner of the premises to be described, which is also the southwesterly corner of land now or formerly of Mohrmann and Rosenthal and from said point or place of beginning;

RUNNING THENCE South 83 degrees 38 minutes 00 seconds East a distance of 434.59 feet to a point;

THENCE South 06 degrees 59 minutes 10 seconds West, 125 feet;

THENCE South 86 degrees 16 minutes 40 seconds East, 409.90 feet to the easterly side of Randall Road;

THENCE North 02 degrees 44 minutes 40 seconds West along the easterly side of Randall Road, 150 feet to the point or place of BEGINNING.

For Conveyancing Only

02/24/2017 9:24:12 AM E-Hoch



EXHIBIT B

Equipment

All Eligible Items acquired, constructed, renovated or installed and/or to be acquired, constructed, renovated or installed by or on behalf of the Company, in connection with the completion of the Town of Brookhaven Industrial Development Agency's Shoreham Solar Commons LLC Facility located at 24 Cooper Street, Shoreham, Town of Brookhaven, New York, and leased to the Company pursuant to the Lease Agreement.

EXHIBIT C

PILOT Schedule

<u>Tax Year Commencing</u>	<u>PILOT</u>
December 1, 2017	\$ 659,589
December 1, 2018	\$ 659,589
December 1, 2019	\$ 659,589
December 1, 2020	\$ 659,589
December 1, 2021	\$ 659,589
December 1, 2022	\$ 673,589
December 1, 2023	\$ 687,869
December 1, 2024	\$ 702,434
December 1, 2025	\$ 717,291
December 1, 2026	\$ 732,445
December 1, 2027	\$ 747,902
December 1, 2028	\$ 763,669
December 1, 2029	\$ 779,750
December 1, 2030	\$ 796,153
December 1, 2031	\$ 812,885
December 1, 2032	\$ 829,951
December 1, 2033	\$ 847,358
December 1, 2034	\$ 865,113
December 1, 2035	\$ 883,224
December 1, 2036	\$ 901,696

Thereafter, 100% of all taxes and assessments, including special ad valorem levies, special assessments and service charges against real property located in the Town of Brookhaven (including any existing incorporated village or any village which may be incorporated after the date hereof, within which the Facility is wholly or partially located) which are or may be for special improvements or special district improvements, that the Company would pay without exemption as if the Facility was owned by the Company exclusive of the Agency's leasehold interest therein.

In addition, at all times, 100% of all special ad valorem levies, special assessments, special district taxes and service charges levied (or would be levied if the Facility were owned by the Company exclusive of the Agency's leasehold interest therein) against the Facility for special improvements or special district improvements.

EXHIBIT D

Mortgage Requirements

Any Mortgage or related document which shall be entered into by the Agency and the Company shall contain the following required provisions:

Non-Recourse and Hold Harmless Provisions to be included in the Lender's Mortgage

Section _____. No Recourse Against Agency. The general credit of the Agency is not obligated or available for the payment of this Mortgage. The Mortgagee will not look to the Agency or any principal, member, director, officer or employee of the Agency with respect to the indebtedness evidenced by this Mortgage or any covenant, stipulation, promise, agreement or obligation contained herein. In enforcing its rights and remedies under this Mortgage, the Mortgagee will look solely to the mortgaged premises and/or the Company for the payment of the indebtedness secured by this Mortgage and for the performance of the provisions hereof. The Mortgagee will not seek a deficiency or other money judgment against the Agency or any principal, member, director, officer or employee of the Agency and will not institute any separate action against the Agency by reason of any default that may occur in the performance of any of the terms and conditions of this Mortgage or the Loan Documentation. This agreement on the part of the Mortgagee shall not be construed in any way so as to effect or impair the lien of this Mortgage or the Mortgagee's right to foreclose hereunder as provided by law or construed in any way so as to limit or restrict any of the rights or remedies of the Mortgagee in any foreclosure proceedings or other enforcement of payment of the indebtedness secured hereby out of and from the security given therefor. All covenants, stipulations, promises, agreements and obligations are the Agency's and not of any member, director, officer, employee or agent (except the Company) of the Agency in his or her individual capacity, and no recourse shall be had for the payment of the principal of any debt or interest thereon or for any claim based thereon or hereunder against any member, director, officer, employee or agent (except the Company) of the Agency or any natural person executing this Mortgage on behalf of the Agency. No covenant contained herein shall be deemed to constitute a debt of the State of New York or the Town of Brookhaven, Suffolk County and neither the State of New York nor the Town of Brookhaven, Suffolk County shall be liable on any covenant contained herein, nor shall any obligations hereunder be payable out of any funds of the Agency.

Section _____. Hold Harmless Provisions. The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the use thereof or under this Mortgage, or (ii) liability arising from or expense incurred by the Project Work or the Agency's acquiring, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party

claims or by reason of the enforcement of any provision of the Mortgage (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Mortgage, the obligations of the Company pursuant to this Section ___ shall remain in full force and effect after the termination of this Mortgage until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all reasonable expenses and charges incurred by the Agency, or its respective members, directors, officers, agents (except the Company) and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its members, directors, officers, agents (except the Company) or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section ___. Recordation of Mortgage. The Agency covenants that it will record or cause this Mortgage to be duly recorded in all offices where recordation thereof is necessary.

Section ___. Termination of Lease Agreement. Upon the termination of the Lease Agreement for any reason whatsoever, and at the sole cost and expense of the Company, the Mortgagee shall prepare, execute and deliver to the Agency and the Company, and the Agency and the Company shall execute, any documents necessary to amend the Mortgage to remove the Agency as a party thereto.

EXHIBIT E

FORM OF SALES TAX AGENT AUTHORIZATION LETTER

SALES TAX AGENT AUTHORIZATION LETTER

EXPIRATION DATE: DECEMBER 31, 2019

ELIGIBLE LOCATION:

24 COOPER STREET, SHOREHAM, TOWN OF BROOKHAVEN, NEW YORK

_____, 201__

TO WHOM IT MAY CONCERN

Re: Town of Brookhaven Industrial Development Agency
(Shoreham Solar Commons LLC 2017 Facility)

Ladies and Gentlemen:

The Town of Brookhaven Industrial Development Agency (the "Agency"), by this notice, hereby advises you as follows:

1. Pursuant to a certain Lease and Project Agreement, dated as of February 1, 2017 (the "Lease Agreement"), between the Agency and Shoreham Solar Commons LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware, having its principal office at 1 South Wacker Drive, Suite 1800, Chicago, IL 60606 (the "Company"), the Agency has authorized the Company to act as its agent in connection with the Facility described therein located at the Eligible Location described above. Certain capitalized terms used herein and not defined shall have the respective meanings given to such terms in the Lease Agreement.

2. Upon the Company's request, the Agency has appointed [**insert name of Agent**] (the "Agent"), pursuant to this Sales Tax Agent Authorization Letter (the "Sales Tax Agent Authorization Letter") to act as the Agency's agent for the purpose of effecting purchases exempt from sales or use tax in accordance with the terms, provisions of this Sales Tax Agent Authorization Letter and the Lease Agreement. **The Agent should review the definitions of Eligible Items and Ineligible Items in Schedule A hereto with respect to the scope of Sales Tax Exemption provided under the Lease Agreement and hereunder.**

3. The effectiveness of the appointment of the Agent as an agent of the Agency is expressly conditioned upon the execution by the Agency of New York State Department of Taxation and Finance Form ST-60 "IDA Appointment of Project Operator or Agent" ("Form ST-60") to evidence that the Agency has appointed the Agent as its agent (the form of which is to be completed by Agent and the Company). Pursuant to the exemptions from sales and use taxes available to the Agent under this Sales Tax Agent Authorization Letter, the Agent shall avail itself of such exemptions when purchasing eligible materials and services in connection with the Facility and shall not include such taxes in its contract price, bid or reimbursable costs, as the case may be.

4. The Agent acknowledges that the executed Form ST-60 shall not serve as a sales or use tax exemption certificate or document. No agent or project operator may tender a copy of the executed Form ST-60 to any person required to collect sales tax as a basis to make such purchases exempt from tax. No such person required to collect sales or use taxes may accept the executed Form ST-60 in lieu of collecting any tax required to be collected. THE CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN AGENT, THE COMPANY, OR OTHER PERSON OR ENTITY OF SUCH FORM ST-60 AS AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE, UNDER ARTICLES TWENTY EIGHT AND THIRTY SEVEN OF THE TAX LAW, THE ISSUANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH THE INTENT TO EVADE TAX.

5. As agent for the Agency, the Agent agrees that it will present to each seller or vendor a completed and signed **NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate”** or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt from Sales and Use Taxes (“Form ST-123”) for each contract, agreement, invoice, bill or purchase order entered into by the Agent, as agent for the Agency, for the construction, repair and equipping of the Facility. Form ST-123 requires that each seller or vendor accepting Form ST-123 identify the Facility on each bill and invoice and invoice for purchases and indicate on the bill or invoice that the Agency or Agent or Company, as project operator of the Agency, was the purchaser. The Agent shall complete Form ST-123 as follows: (i) the “Project information” section of Form ST-123 should be completed using the name and address of the Facility as indicated on the Form ST-60 used to appoint the Agent; (ii) the date that the Agent was appointed as an agent should be completed using the date of the Agent’s Sales Tax Agent Authorization Letter; and (iii) the “Exempt purchases” section of Form ST-123 should be completed by marking “X” in box “A” only.

6. The Agent agrees to comply with the terms and conditions of the Lease Agreement. The Agent must retain for at least six (6) years from the date of expiration of its contract copies of (a) its contract with the Company to provide services in connection with the Facility, (b) all contracts, agreements, invoices, bills or purchases entered into or made by such Agent using the Letter of Authorization for Sales Tax Exemption, and (c) the executed Form ST-60 appointing the Agent as an agent of the Agency, and shall make such records available to the Agency upon reasonable notice. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

7. In order to assist the Company in complying with its obligation to file New York State Department of Taxation and Finance Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority” (“Form ST-340”), the Agent covenants and agrees that it shall file semi-annually with the Company and the Agency (no later than January 15th and July 15th of each calendar year in which it has claimed sales and use tax exemptions in connection with the Facility) a written statement of all sales and use tax exemptions claimed by such Agent for the preceding six-month period (ending on June 30th or December 31st, as applicable) in connection with the Facility by completing and submitting to the Company and the Agency the **Sales Tax Registry** attached hereto as **Schedule B**. If the Agent fails to comply with the foregoing requirement, the Agent shall immediately cease to be the agent for the Agency in connection with the Facility (such

agency relationship being deemed to be immediately revoked) without any further action of the parties, the Agent shall be deemed to have automatically lost its authority to make purchases as agent for the Agency, and shall desist immediately from all such activity.

8. The Agent agrees that if it fails to comply with the requirements for sales and use tax exemptions, as described in this Sales Tax Agent Authorization Letter, it shall pay any and all applicable Company Sales Tax Savings and any interest and penalties thereon. This provision shall survive the expiration or termination of this Sales Tax Agent Authorization Letter.

9. Special Provisions Relating to State Sales Tax Savings.

(a) The Agent covenants and agrees to comply, and to cause each of its contractors, subcontractors, persons or entities to comply, with the requirements of General Municipal Law Sections 875(1) and (3) (the "Special Provisions"), as such provisions may be amended from time to time. In the event of a conflict between the other provisions of this Sales Tax Agent Authorization Letter or the Lease Agreement and the Special Provisions, the Special Provisions shall control.

(b) The Agent acknowledges and agrees that pursuant to General Municipal Law Section 875(3) the Agency shall have the right to recover, recapture, receive, or otherwise obtain from the Agent State Sales Tax Savings taken or purported to be taken by the Agent or any other person or entity acting on behalf of the Agent to which Agent or the Company is not entitled or which are in excess of the Maximum Company Sales Tax Savings Amount or which are for property or services not authorized or taken in cases where the Company, any Agent or any other person or entity acting on behalf of the Company or the Agent failed to comply with a material term or condition to use property or services in the manner required by this Sales Tax Agent Authorization Letter or the Lease Agreement. The Company shall, and shall require each Agent and any other person or entity acting on behalf of the Company, to cooperate with the Agency in its efforts to recover, recapture, receive, or otherwise obtain such State Sales Tax Savings and shall promptly pay over any such amounts to the Agency that it requests. The failure to pay over such amounts to the Agency shall be grounds for the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner") to assess and determine State Sales and Use Taxes due from the Company under Article Twenty-Eight of the New York State Tax Law, together with any relevant penalties and interest due on such amounts.

10. Subject to the provisions of Section 9 hereof, in the event that the Agent shall utilize the Sales Tax Exemption in violation of the provisions of the Lease Agreement or this Sales Tax Agent Authorization Letter, the Agent shall promptly deliver notice of same to the Company and the Agency, and the Agent shall, upon demand by the Agency, pay to or at the direction of the Agency a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of twelve percent (12%) per annum compounded daily from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by the Agent.

11. Upon request by the Agency with reasonable notice to the Agent, the Agent shall make available at reasonable times to the Agency all such books, records, contracts, agreements, invoices, bills or purchase orders of the Agent, and require all appropriate officers and employees of the Agent to respond to reasonable inquiries by the Agency as shall be necessary (y) to indicate in reasonable detail those costs for which the Agent shall have utilized the Sales

Tax Exemption and the dates and amounts so utilized, and (z) to permit the Agency to determine any amounts owed by the Agent under Section 10.

12. By execution of this Sales Tax Agent Authorization Letter, the Agent agrees to accept the terms hereof and warrant to the Agency that the use of this Sales Tax Agent Authorization Letter by the Agent is strictly for the purposes stated herein.

13. The Agent acknowledges that this Sales Tax Agent Authorization Letter will terminate on the date (the "Termination Date") that is the earlier of (i) the Expiration Date referred to above, and (ii) the expiration or termination of the Lease Agreement. Upon the Termination Date, the agency relationship between the Agency and the Agent shall terminate.

(Remainder of Page Intentionally Left Blank -Signature Page Follows)

The signature of a representative of the Agent where indicated below will indicate that the Agent accepted the terms hereof.

**TOWN OF BROOKHAVEN
INDUSTRIAL
DEVELOPMENT AGENCY**

By: _____
Name:
Title:

ACCEPTED AND AGREED TO BY:

[AGENT]

By: _____
Name:
Title:

Schedule A

To SALES TAX AGENT AUTHORIZATION LETTER

Set forth below is a description of items that are eligible for the Sales Tax Exemption

Eligible Items shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility;
- (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more;
- (iii) with respect to the eligible items identified in (ii) above: purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs;
- (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and
- (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

Ineligible Items shall mean the following items of personal property and services with respect to which the Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) ordinary office supplies such as pencils, paper clips and paper;
- (v) any materials or substances that are consumed in the operation of machinery;
- (vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (vii) maintenance of the type as shall constitute janitorial services.

Schedule B

**To
SALES TAX AGENT AUTHORIZATION LETTER**

SALES TAX REGISTRY

Please Complete: **REPORTED PERIOD:** SEMI-ANNUAL PERIOD FROM [JANUARY 1][JULY 1], 201__ to [JUNE 30][DECEMBER 31], 201__

Description of Item (incl. Serial #,if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings

TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL REPORTED PERIOD:	
---	--

Certification: I, the undersigned, an authorized officer or principal owner of the company identified below, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Company Sales Tax Savings realized by the company identified below and its principals, affiliates, tenants, subtenants, contractors and subcontractors. This form and information provided pursuant hereto may be disclosed to the Town of Brookhaven Industrial Development Agency ("TOBIDA"), and may be disclosed by TOBIDA in connection with the administration of the programs by TOBIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Name of Agent: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

EXHIBIT F

Sales Tax Registry

Please Complete: **REPORTED PERIOD:** ANNUAL PERIOD FROM JULY 1, 201__ to JUNE 30, 201__

Description of Item (incl. Serial #, if applicable)	Location of Item	Dollar Amount	Vendor Description	Date of Payment	Purchase order or invoice number	Sales Tax Savings
SEMI-ANNUAL PERIOD FROM JULY 1, [] to DECEMBER 31, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JULY 1, [] to DECEMBER 31, []:						
SEMI-ANNUAL PERIOD FROM JANUARY 1, [] to JUNE 30, []						
TOTAL SALES TAX SAVINGS REALIZED DURING THE SEMI-ANNUAL PERIOD FROM JANUARY 1, [] to JUNE 30, []:						
TOTAL SALES TAX SAVINGS REALIZED DURING THE ANNUAL REPORTED PERIOD:						

Certification: I, the undersigned, an authorized officer or principal owner of the Company, hereby certify to the best of my knowledge and belief that all information contained in this report is true and complete. The information reported in this form includes all Company Sales Tax Savings realized by the Company below and its principals, affiliates, tenants, subtenants, contractors, subcontractors and any other person or entity pursuant to the LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION issued to the Company, and any SALES TAX AGENT AUTHORIZATION LETTER issued to any other person or entity at the direction of the Company, by the Town of Brookhaven Industrial Development Agency ("TOBIDA"). This form and information provided pursuant hereto may be disclosed by TOBIDA in connection with the administration of the programs by TOBIDA; and, without limiting the foregoing, such information may be included in reports or disclosure required by law.

Company Name: _____

Signature By: _____

Name (print): _____

Title: _____

Date: _____

EXHIBIT G

Compliance with Labor Law, Executive Law and Civil Rights Law

The purpose of the Town of Brookhaven Industrial Development Agency (the “**Agency**”) is to provide benefits that reduce costs and financial barriers to the creation and to the expansion of business and enhance the number of jobs in Suffolk County.

The Agency has consistently sought to ensure that skilled and fair paying construction jobs be encouraged in straight-lease transactions with the Agency.

Now therefor, the parties to the attached Lease Agreement (the “**Agreement**”) further agree to be bound by the following, which are hereby made a part of the Agreement.

- I. The Company agrees that:
 - (a) no laborer, workman or mechanic, in the employ of the Company or any contractor, subcontractor or other person doing or contracting to construct and equip the Facility shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in compliance with the Labor Law; and
 - (b) to the extent applicable and required by law, the Company shall comply with the provisions of the Labor Law of the State of New York (the “**Labor Law**”), including Section 220 thereof. While such Labor Law does not presently require or obligate the Company to pay the prevailing rate of wages as such term is defined in Section 220-d thereof, the Company acknowledges that it has been advised that it is the policy of the Agency to encourage the Company to voluntarily comply with such provisions.

- II. To the extent required by law, the Company agrees that each contract or subcontract for the construction and equipping of the Facility shall provide:
 - (a) in the hiring of employees for the performance of work in acquiring, demolishing, constructing and equipping the Facility, or for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility, neither the Company nor any contractor, subcontractor nor any person acting on behalf of the Company shall by reason of race, creed, color, disability, sex, or national origin, marital status or Vietnam veteran era status discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
 - (b) neither the Company nor any contractor, subcontractor, nor any person on their behalf shall, in connection with the acquisition, construction and equipping of the Facility, discriminate against or intimidate any

employee hired for the performance of work involved in acquiring, constructing and equipping the Facility on account of race, creed, color, disability, sex, national origin, marital status or Vietnam era veteran status; and

- (c) the aforesaid provisions of this section covering every contract for the manufacture, sale or distribution of materials, equipment or supplies in connection with the acquisition, construction and equipping of the Facility shall be limited to operations performed within the territorial limits of the State of New York.

- III. To the extent required by law, the Company will comply with the applicable provisions of Sections 291-299 of the Executive Law, and with the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights, and will provide access, as required by law, to its books, records and accounts to the State Division of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and the Civil Rights Law.

EXHIBIT H

EXCEPTIONS TO REPRESENTATIONS AND WARRANTIES OF COMPANY

Matters disclosed in that certain Phase I Environmental Site Assessment Report, dated February 2017 by TRC.

EXHIBIT I
GROUND LEASE

SOLAR LEASE AND EASEMENT AGREEMENT

SHOREHAM SOLAR COMMONS

Suffolk County, State of New York

THIS SOLAR LEASE AND EASEMENT AGREEMENT (this “**Agreement**”) is made, dated and effective as of February 27, 2017 (the “**Effective Date**”), by and between PHIE Shoreham LLC, a Delaware limited liability company (together with its successors, assigns and heirs, comprising “**Owner**”), and Shoreham Solar Commons LLC, a Delaware limited liability company (together with its transferees, successors and assigns, “**Grantee**”), and in connection herewith, Owner and Grantee agree, covenant and contract as set forth in this Agreement. Owner and Grantee are sometimes referred to in this Agreement as a “**Party**” or collectively as the “**Parties**”.

1. Lease/Easement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner and Grantee, upon the terms and conditions set forth in this Agreement, Owner hereby grants and conveys to Grantee an exclusive easement and lease to convert, maintain and capture the flux of solar energy over across and through the surface estate of that certain real property, including, but not limited to, the air space thereon, located in Suffolk County, (the “**County**”), State of New York consisting of 146.35 acres, as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”) for the purposes set forth below.

1.1 Purposes of the Lease/Easement. This Agreement is solely and exclusively for solar energy purposes (as such term is broadly defined, including ancillary rights related thereto and necessary for the development and operation of Solar Facilities (as defined below)), and not for any other purpose, and Grantee shall have the exclusive right to develop and use the Property for solar energy purposes and to derive all profits therefrom, including but not limited to the following activities (collectively, “**Site Activities**”):

(a) Converting solar energy into electrical energy, and collecting and transmitting the electrical energy so converted;

(b) Determining the feasibility of solar energy conversion and other power generation on the Property or on adjacent lands, including studies of solar energy emitted upon, over and across the Property and other meteorological data, environmental studies and extracting soil samples;

(c) Constructing, laying down, installing, using, replacing, relocating, reconstructing and removing from time to time, and monitoring, maintaining, repairing and operating the following only for the benefit of the Project or Projects (as defined below) (i) solar energy collection and electrical generating equipment of any kind (including, without limitation, any such equipment utilizing photovoltaic and/or solar thermal technology (collectively, “**Solar Generating Equipment**”); (ii) overhead and underground electrical distribution, collection, transmission and communications lines or cables, electric combiners, inverters, transformers and substations, energy storage facilities, and telecommunications equipment; (iii) roads and crane pads; (iv) meteorological measurement equipment; (v) control buildings, operations and maintenance facilities and buildings; and (vi) installing, operating, maintaining, repairing and replacing any other improvements, whether accomplished by Grantee or a third party authorized by Grantee, that Grantee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing (all of the above, including the Solar Generating Equipment, collectively “**Solar Facilities**”). The term “**Project**”, for the purposes of this Agreement, means an integrated solar energy generation system, consisting of Solar Facilities, that is constructed and operated on the Property, and/or adjacent lands, by Grantee, or a third party authorized by Grantee. Grantee may determine whether

any particular group of Solar Facilities constitutes a single Project or multiple Projects for purposes of this Agreement, and in the case of multiple Projects, which portion of the Property shall be included within each Project.

1.2 Other Uses. During the Term when Grantee construction is or is about to occur, Owner agrees to provide Grantee with current information concerning the status and location of all other land uses occurring on the Property (including, without limitation, agricultural use, industrial use and oil and gas exploration and production activities).

2. Grant of Additional Easements.

2.1 Owner hereby grants, conveys and warrants to Grantee the following additional easements upon, over, across and under the Property and all other property that is adjacent to, or relatively nearby, the Property, and is owned or controlled by Owner, as of the Effective Date:

(a) Non-Obstruct. An exclusive easement to capture, use and convert the unobstructed flux of solar energy over and across the Property from all angles and from sunrise to sunset at the Property during each day of the Term.

(b) Interference. An exclusive easement for electromagnetic, audio, visual, view, light, noise, vibration, electrical, radio interference, or other effects attributable to the Solar Generating Equipment, the Project or any Site Activities;

(c) Access Easement. A non-exclusive easement for ingress to and egress from the Project or Projects (whether located on the Property, on adjacent property or elsewhere) over and across the Property by means of roads and lanes thereon if existing or later constructed by Owner, or otherwise by such route or routes as Grantee may construct from time to time;

(d) Other Easements. All other easements reasonably necessary to accomplish the activities permitted by this Agreement, including without limitation, generation-tie and transmission line easements, utility easements (including underground and above-ground gas, electricity, water, and telephone), drainage easements, and geotechnical and environmental testing and sampling easements.

3. Term. The term of this Agreement shall commence on the Effective Date and continue for the following described periods (collectively, the "**Term**");

3.1 Development Term. This Agreement shall be for an initial term (the "**Development Term**") commencing on the Effective Date and continuing until the earlier to occur of (a) the date Grantee closes construction financing for the Project, and (b) the date which is six (6) months after the Effective Date.

3.2 Construction Term. The "**Construction Term**" shall commence automatically upon the expiration of the Development Term and continue until the earlier of (a) on which Grantee begins selling electrical energy generated by substantially all of the Solar Generating Equipment to be included in the Project to a third-party power purchaser, and (b) June 30, 2018 (such earlier date being the "**Operations Date**").

3.3 Operations Term. Upon the expiration of the Construction Term, the term of this Agreement shall automatically extend for an additional thirty (30) year term (the "**Operations Term**").

4. Payments to Owner.

(a) In consideration of the rights granted hereunder, Grantee will pay Owner the amounts set forth in Exhibit B attached hereto on or before the applicable date that each such payment

is due as set forth in said Exhibit B. Exhibit B shall not be recorded without the specific prior written consent of Grantee.

(b) Grantee covenants to pay the amounts required by Section 4(a) above, in the amounts and on or before the dates due as set forth in Exhibit B, without any demand therefor, and without any right to any set-offs, deductions, abatements or any other concessions whatsoever. The obligation to timely pay such amounts is independent of any other obligations hereunder and is not subject to any defenses, counterclaims, reductions, or abatements.

(c) This Agreement is intended to be (or have the same effect as) an absolute, triple net lease, and Grantee's obligation to pay the amounts required by Section 4(a) above shall not terminate and shall not be diminished, modified, reduced, suspended, postponed, abated, or otherwise affected in any way, for any reason, including by reason of (i) any damage to or destruction of the Property or the improvements located thereon, (ii) any taking of any part of the Property, (iii) any defect in title, or the existence of any liens, encumbrances, or other rights with respect to the Property, (iv) any insolvency, bankruptcy, reorganization or similar proceedings by or against Grantee, (v) the invalidity or unenforceability, in whole or in part, of this Agreement, (vi) any prohibition, limitation, restriction, or prevention of Grantee's use, unless caused by the acts of Owner in violation of its obligations hereunder, (vii) any action by any governmental authority, or (viii) any other similar cause or event not caused by the Owner in violation of its obligations hereunder.

5. Ownership of Solar Facilities. Owner shall have no ownership, lien, security or other interest in any Solar Facilities installed on the Property, or any profits derived therefrom, and Grantee may remove any or all Solar Facilities at any time. Except for those payments described in this Agreement, including Exhibit B, Owner shall not be entitled to any other payments or benefits accrued by or from the Project, including, but not limited to, renewable energy credits, environmental credits or tax credits.

6. Taxes. Grantee shall pay any and all of the following to the extent the same shall or may during the Term be imposed on, or arise in connection with the Property or the presence of the Solar Facilities installed upon the Property (collectively, "Taxes"): (a) taxes (including general real estate taxes, ad valorem taxes, and other similar taxes that affect real estate or to which real estate is subject), (b) assessments, (c) payments in lieu of taxes (whether pursuant to a PILOT agreement or otherwise), (d) amounts due under any documents executed between the Town of Brookhaven Industrial Development Agency and Grantee in connection with the provision of tax abatements and other benefits in favor of the Project (the "IDA Documents"), or (e) other governmental charges, general and specific. To the extent the applicable taxing authority provides a tax bill for the Taxes to Owner, then Owner shall promptly provide such tax bill to Grantee, so that Grantee can pay the applicable Taxes prior to the date such Taxes become delinquent.

7. Indemnity/Liability.

7.1 To the fullest extent permitted by law, Grantee hereby agrees to indemnify, defend and hold Owner and its managers, members, and representatives (the "**Indemnified Parties**") harmless from and against any and all claims, damages, losses, costs, expenses or liability (collectively "**Indemnified Claims**"), in any way arising from or relating to, (a) the use or occupancy of, the operations on, the construction or installation of any improvements on, or any activity or work done in or about the Property by Grantee, or any of its consultants, agents, contractors, licensees, tenants or invitees, (b) any condition of or relating to, or any event, circumstance or occurrence on, the Property during the Term, (c) a breach by Grantee of any of its duties or obligations hereunder, or (d) any accident, injury, or damage whatsoever caused to any person, firm, or corporation occurring during the Term, in or about the Property; provided however, that Indemnified Claims shall not include damages, losses or liabilities that result solely from the intentional acts of Owner. Indemnified Claims shall specifically include all costs, reasonable attorneys' fees and expenses, and liabilities incurred in connection with such claim or action or proceeding brought;

and in case any action or proceeding brought against Owner by reason of any such Indemnified Claim, Grantee at Owner's option, covenants to defend such action or proceeding with counsel reasonably satisfactory to Owner.

7.2 Except for payments expressly required herein, in no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise, shall either Party be liable to the other Party for loss of profit or revenues, loss of business opportunities or for any other special, consequential, incidental, indirect or exemplary damages.

7.3 In no event shall Grantee or its Related Persons be liable to Owner for property damage or personal injuries to Owner or its Related Persons attributable to risks of known and unknown dangers associated with normal day-to-day operation of electrical generating facilities, such as noise, electromagnetic fields, and glare, or from any runoff or altered drainage patterns resulting from Grantee's grading of the Property.

7.3 This Section 7 shall survive the expiration or earlier termination of this Agreement.

8. Grantee's Responsibility.

8.1 During the Term of this Agreement, Grantee shall have the sole and exclusive right to the use and possession of the Property and shall be entitled to operate the Project on the Property. Because Grantee has the complete control of the Property for the purposes set forth therein, this Agreement is intended to constitute an absolute, "triple net" lease, and Grantee is responsible for all costs, expenses, obligations, and liabilities relating in any way to the Property, including without limitation, the following:

(a) Utilities. Grantee agrees to pay when due, all charges of every nature, kind, or description for utilities furnished to the Property, or chargeable against the Property, including all charges for water, electricity, gas, light, sewage, garbage, telephone, cable, internet, steam, power, or other public or private utility services, subject to Grantee's right to contest any disputed amounts as long as no lien attaches to, or is filed against, the Property.

(b) Maintenance/Repairs. Grantee acknowledges that it is familiar with the Property, has had an opportunity to inspect and investigate the Property, and accepts the Property in it "AS-IS, WHERE-IS" condition. Grantee shall keep and maintain the Property in good condition and repair, and shall keep the Property in a clean, safe, and secure condition. Without limitation of the foregoing, Grantee shall be entirely responsible for the Property (including, without limitation, the clubhouse located in the northwest corner of the Property and its adjacent parking lot), and shall be responsible, to the extent the same is not performed by some agency or agent of the state or local government, for all improvements, fixtures, equipment, and personal property located (or to be constructed, installed, or located) on the Property, and for all parking areas, sidewalks, utilities, pipes, lines, landscaping, and all other facilities located on the Property. All such repairs and replacements shall be of a quality, sufficient for the proper maintenance and operation of the Property in compliance with all applicable laws, codes, and ordinances. Grantee shall keep and maintain the improvements at any time situated upon the Property and all sidewalks, vault space, parking areas, and areas adjacent thereto, safe, secure and clean, specifically including, but not limited to, snow and ice clearance, landscaping, and removal of waste and refuse. Grantee shall maintain the clubhouse located in the northwest corner of the Property and its adjacent parking lot in the same condition in which it was delivered to Grantee on the Effective Date. In addition to the foregoing, Grantee shall restore any damage to the Property (which shall not be deemed to include permanent modifications to the Property in order to render it more suitable for the presence or operation of the Solar facilities) caused during construction promptly following the commercial operations date of the Project. Grantee shall not permit anything to be done upon the Property (and shall perform all maintenance, replacements, and repairs thereto) so as not to invalidate, in whole or in part, or prevent the procurement of any insurance policies which may, at any time, be required under the provisions of this Lease. For the avoidance of doubt, Owner

shall not be obligated to construct, install, maintain or remove the Solar Facilities, any existing improvements on the Property, or any other improvements constructed on the Property by Grantee in the future.

(c) Compliance with Laws and Insurance Requirements. Grantee, at Grantee's sole cost and expense, shall promptly comply and shall cause the Property to comply with all present and future laws, ordinances, orders, rules, regulations, and requirements of (i) all federal, state, municipal and local governments, departments, commissions, boards and officers, and all order, rules and regulations of the National Board of Fire Underwriters, or any other body or bodies exercising similar functions, and (ii) all contracts, agreements, insurance policies, permits, license, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Property and to all or any parts thereof and/or any and all facilities used in connection therewith or to the use or manner of use of the Property, or the owners, tenants or occupants thereof, whether or not any such law, ordinance, order, rule regulation or requirement shall interfere with the use and enjoyment of the Property. Grantee shall make any and all structural repairs or alterations with respect to the Property to the extent, if any, needed to bring the Property into compliance with such laws, ordinances, orders, rules, regulations or requirements, including, without limitation, the Americans with Disabilities Act.

8.2 No Owner Responsibility. Owner is not required, and shall have no obligation, to furnish any utilities, services, or facilities, or to make any repairs, alterations, replacements, or improvements whatsoever, in, to, or about the Property. Grantee assumes the full and sole responsibility for the condition, operation, repair, replacement, maintenance, and management of the Property and all improvements, facilities, or systems of any kind located or erected on the Property, and for compliance with all laws relating thereto whether now existing or subsequently enacted.

9. Grantee's Representations, Warranties, and Covenants. Grantee hereby represents, warrants, and covenants to Owner that:

9.1 Grantee's Authority. Grantee has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of Grantee is authorized to do so. Upon execution by all Parties hereto, this Agreement shall constitute a valid and binding agreement enforceable against Grantee in accordance with its terms.

9.2 Minimal Impacts. Grantee agrees to conduct its Site Activities and to locate and operate its Solar Facilities in such a way as to reasonably minimize impacts to the Property, to the extent practical, without negatively impacting the Solar Facilities. If Owner's Property is fenced, all access roads constructed by Grantee on the Property shall be gated by Grantee at Grantee's expense, and Owner shall be furnished with keys or other ability to open and close such gates.

9.3 Insurance.

(a) Grantee shall, at its expense, be responsible for assuring that the insurance coverages, as would be customary and reasonable for similarly situated companies performing the work carried out by Grantee at such time, are maintained, including, without limitation, adequate coverage to cover any personal injuries or accidents that could reasonably be expected as a direct result of the Site Activities conducted by Grantee or its Related Persons on the Property. In addition to any other coverages, Grantee shall maintain, at a minimum, the insurance set forth on Exhibit E attached hereto during the Term.

(b) Mutual Waiver. Owner and Grantee hereby waive all claims for recovery from the other party for any loss or damage (whether or not such loss or damage is caused by negligence of the other party and, notwithstanding any provision or provisions contained in this Agreement to the contrary) to any person or property insured under valid and collectible insurance policies to the extent of

any recovery collectible under such insurance, subject to the limitation that this waiver shall apply only when it is permitted by the applicable policy of insurance.

(c) Delivery to Owner. Certificates evidencing all insurance coverages required under this Agreement shall be delivered to Owner and to Owner's mortgagee, if any, within five (5) days after demand, and evidence of the renewal thereof shall be delivered to Owner at least fifteen (15) days prior to the expiration dates of the respective policies.

9.4 Requirements of Governmental Agencies.

(a) Grantee, at its sole cost and expense, shall comply in all material respects with any and all laws, codes and ordinances (and for curing or removing any violations thereof to the extent caused by Grantee) relating to the Property, or the use, occupancy, construction on and condition thereof, specifically including, all valid laws, ordinances, statutes, orders, and regulations of any governmental agency applicable to the Solar Facilities, whether such compliance or the associated costs and expenses were foreseen or unforeseen, ordinary or extraordinary, and whether or not the same were or are presently within the contemplation of Owner or Grantee, or result from changes in such laws, codes or ordinances, or in the governmental policy relating thereto. Grantee shall, at its sole cost and expense, obtain and keep in force during the Term, all licenses, certificates and permits necessary in connection with its use of, or operations on, the Property. Grantee shall have the right, in its sole discretion, to contest by appropriate legal or administrative proceedings, the validity or applicability to Grantee, the Property or Solar Facilities of any law, ordinance, statute, order, regulation, property assessment, or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity; provided however that Grantee shall indemnify Owner from and against any and all losses, damages, suits, claims, costs or expenses in any way related to such contest or the alleged violation of any laws. Any such contest or proceeding shall be controlled and directed by Grantee.

(b) Grantee, at its sole cost and expense shall comply in all material respects with the IDA Documents. Grantee shall indemnify Owner from and against any and all losses, damages, suits, claims, costs or expenses in any way related to Grantee's failure to pay all amounts required to be paid under the IDA Documents when such amounts are due and payable, or any other violation of the IDA Documents.

9.5 Construction Liens. Grantee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies, or equipment furnished to, the Property in connection with Grantee's use of the Property pursuant to this Agreement; provided, however, that if Grantee wishes to contest any such lien, Grantee shall, at Grantee's sole discretion and within sixty (60) days after it receives written notice of the filing of such lien, either (i) provide a bond to Owner for the amount of such lien, or (ii) provide Owner with title insurance insuring Owner's interest in the Property against such lien claim.

9.6 Hazardous Materials. Neither Grantee nor its Related Persons shall violate any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of asbestos-containing materials, petroleum, explosives or any other substance, material, or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state, or local laws or regulations, on or under the Property (each, a "**Hazardous Material**"). Grantee shall promptly notify Owner if any violation occurs.

10. Owner's Representations, Warranties, and Covenants. Owner hereby represents, warrants, and covenants as follow:

10.1 Owner's Authority. Owner is the sole fee simple owner of the Property and has the unrestricted right and authority to execute this Agreement and to grant to Grantee the rights granted

hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so. Upon execution by all Parties hereto, this Agreement shall constitute a valid and binding agreement enforceable against Owner in accordance with its terms.

10.2 No Interference. Subject to Grantee's sole and exclusive right to use and possess the Property, Owner's activities and any grant of rights Owner makes to any person or entity, shall not, currently or prospectively, disturb or interfere with: the construction, installation, maintenance, or operation of the Solar Facilities, whether located on the Property or elsewhere; access over the Property to such Solar Facilities; any Site Activities; or the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Owner shall not erect any structures, plants or other equipment, or enter into any third party agreements or amend or extend any existing agreements ("**Third Party Agreements**") or undertake any other activities (an "**Owner Action**" or collectively the "**Owner Actions**") that may: (i) interfere with Grantee's right to install Solar Facilities on any portion of the Property, (ii) potentially cast a shadow onto the Solar Facilities, (iii) cause a decrease in the output or efficiency of any Solar Facilities, (iv) interrupt the flux of solar energy upon, across and over any portion of the Property used or to be used by the Solar Facilities, or (v) otherwise interfere with Grantee's operations on the Property (each an "**Interference**"). Prior to undertaking an Owner Action, that may cause an Interference, Owner shall consult with Grantee to confirm that such Owner Action will not cause any Interference. If Grantee reasonably determines the Owner Action could cause an Interference, then Owner shall not be permitted to undertake such Owner Action. Owner shall not disturb or permit the disturbance of the subsurface such that may impact in any way the structural integrity or the operations and maintenance of the Solar Facilities. Grantee shall have the right to trim existing trees to maintain approximately their same height and width as exists as of the date hereof for the purpose of not interfering with the flux of solar energy from any angle upon, across and over the Property. Owner agrees not to develop, co-develop, acquire or otherwise participate in any solar related project or projects with an aggregate output in excess of 500 kilowatts within any area that is within five (5) miles of the Project.

10.3 Cooperation. Except as may be disclosed in the real property records of the County, or as disclosed by Owner in writing to Grantee on or prior to the Effective Date, Owner represents there are no mechanic's liens or any other encumbrances caused by Owner or any person acting on behalf of Owner (with actual authority) or at Owner's direction, which encumber all or any portion of the Property and could interfere with Grantee's operations on the Property. Owner shall reasonably cooperate and assist Grantee in removing or limiting interference with rights granted to Grantee herein, including, but not limited to, attempting to obtain a subordination and non-disturbance agreement where Grantee deems it necessary, with terms and conditions reasonably requested by Grantee and reasonably acceptable to Owner to protect its rights hereunder, from each party that holds such rights (recorded or unrecorded), and in the case of monetary liens such as mechanic's liens, bonding over any such liens in an amount that may be reasonably requested by Grantee; provided however that Owner shall not be required to incur any costs or expenses in connection with any of the foregoing.

10.4 Requirements of Governmental Agencies and Setback Waiver. Owner shall assist and fully cooperate with Grantee, at no out-of-pocket expense to Owner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews, tax abatements or any other permits and approvals reasonably necessary for the financing, construction, installation, monitoring, repair, replacement relocation, maintenance, operation or removal of Solar Facilities, including, but not limited to, execution of applications and documents reasonably necessary for such approvals and permits, and participating in any appeals or regulatory proceedings respecting the Solar Facilities. To the extent permitted by law, Owner hereby waives enforcement of any applicable setback requirements respecting the Solar Facilities to be placed on or near the Property that are reasonably necessary, in Grantee's sole and absolute discretion, to carry out Grantee's power-generating activities on or near the Premises.

10.5 Hazardous Materials. Neither Owner nor its Related Persons shall violate any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any Hazardous Material. Owner shall promptly notify Grantee if any such violation occurs. Owner certifies it has never received any notice or other communication from any governmental authority alleging that the Property is or was in violation of any applicable law.

10.6 Litigation. No litigation is pending, and, to the best of Owner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or which could affect, the Property. If Owner learns that any such litigation, action, claim or proceeding is threatened or has been instituted, Owner shall promptly deliver notice thereof to Grantee and provide Grantee with periodic updates of the status of said litigation, action, claim or proceeding that is ongoing.

10.7 Title Insurance and Financing. Owner agrees that Owner shall execute and deliver to Grantee any customary and reasonable documents reasonably required by the title insurance company and/or a financing party within ten (10) business days after presentation of said documents by Grantee; provided, however, in no event shall such documents materially increase any obligation, created any liability or exposure for Owner, or materially decrease any right of Owner hereunder. Owner shall have no obligation to initiate the process to obtain title insurance on behalf of the Grantee.

11. Assignment.

11.1 Collateral Assignments. Grantee shall have the absolute right in its sole and exclusive discretion, without obtaining the consent of Owner, to finance, mortgage, encumber, hypothecate, pledge or transfer to one or more Mortgagees any and all of the rights granted hereunder, including the easements granted in Section 2, and/or any or all rights or interests of Grantee in the Property or in any or all of the Solar Facilities; provided that, in no event shall any such Mortgagee have any right, claim, or lien against Owner's interest in the Property.

11.2 Non-Collateral Assignments. Grantee shall not have the right, without the prior consent of Owner (which consent shall not be unreasonably withheld, conditioned or delayed), to sell, convey, lease, assign or transfer (including granting co-easements, separate easements, subeasements) any or all of its rights hereunder in and to any or all of the Property. Grantee shall be relieved of all of its obligations arising under this Agreement, as to all or such portion of its interests in the Property transferred, from and after the effective date of such transfer, provided (a) such rights and obligations have been assumed by such transferee, and (b) Owner has consented to such transfer.

11.3 Acquisition of Interest. The acquisition of all interests, or any portion of interest, in Grantee by another person shall not require the consent of Owner or constitute a breach of any provision of this Agreement and Owner shall recognize the person as Grantee's proper successor.

12. Default and Remedies.

(a) If a Party defaults in or otherwise fails to perform an obligation under this Agreement, the non-defaulting Party shall not have the right to exercise any remedies hereunder if the default is cured by the defaulting Party within the following time frames after receiving written notice of such default specifying in detail the default and the requested remedy (a "Notice of Default"): (a) fifteen (15) days after receipt of notice of a Monetary Default (defined below) or (b) one hundred twenty (120) days after receipt of notice of a Non-Monetary Default (defined below). Notwithstanding the foregoing, if the nature of a Non-Monetary Default of either Party requires, in the exercise of commercially reasonable diligence, more than the time periods set forth above to cure, the non-defaulting Party shall not have the right to exercise any remedies hereunder as long as the defaulting Party commences performance of the

cure for such Non-Monetary Default within the time periods set forth above and thereafter completes such cure with commercially reasonable diligence. Further, if the Parties have a good faith dispute as to whether a payment is due hereunder, the alleged defaulting Party may deposit the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) into escrow with any reputable third party escrowee, or may interplead the same, which amount shall remain undistributed and shall not accrue interest penalties, and no default shall be deemed to have occurred, until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the defaulting Party's right to institute legal action for recovery of such amounts. As used herein, "Monetary Default" means a Party's failure to pay when due any monetary obligation of such Party under this Agreement (including, without limitation, amounts due pursuant to Section 4 and Exhibit B). Any other default by a Party is a "Non-Monetary Default."

12.3 Remedies.

(a) Except as qualified by Section 13 regarding Mortgagee Protections, should a default remain uncured beyond the applicable cure periods, the non-defaulting Party shall have the right to exercise any and all remedies available to it at law (including, without limitation, money damages) or in equity, all of which remedies shall be cumulative, including the right to enforce this Agreement by injunction, specific performance or other equitable relief. Notwithstanding anything in this Agreement to the contrary or any rights or remedies Owner might have at law or in equity, if any of Grantee's Solar Facilities are then located on the Property and Grantee fails to perform any of its obligations hereunder beyond applicable cure periods, Owner shall have the right to terminate or cancel this Agreement, or to terminate Grantee's right to possession of the Property. Upon the termination of this Agreement or of Grantee's right to possession, Grantee must immediately surrender possession of the Property to Owner and at Owner's option, shall remediate the Property in accordance with Section 14.3 below.

(b) Expenses of Enforcement. Grantee shall pay upon demand all Owner's expenses, including reasonable attorneys' fees and court costs incurred either directly or indirectly in enforcing any obligation of Grantee under this Agreement and in defending or otherwise participating in any legal proceedings initiated by or on behalf of Grantee wherein Owner is not adjudicated to be in default under this Agreement.

13. Mortgagee Protection. In the event that any mortgage, deed of trust, financing statement, or other security interest in this Agreement or in any Solar Facilities, or any portion thereof (a "Mortgage"), is entered into by Grantee then any person who is the mortgagee, grantee or beneficiary of a Mortgage (a "Mortgagee") shall, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 13. Grantee shall send written notice to Owner of the name and address of any such Mortgagee; provided that failure of Grantee to give notice of any such Mortgagee shall not constitute a default under this Agreement and shall not invalidate such Mortgage, but the Mortgagee shall not have rights with respect to or against Owner unless Owner has received written notice of Mortgagee's interest.

13.1 Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the leasehold and/or easement estate by any lawful means; (iii) to take possession of and operate the Solar Facilities or any portion thereof, to exercise all of Grantee's rights hereunder, and to perform all obligations to be performed by Grantee hereunder, or to cause a receiver to be appointed to do so; and (iv) to acquire the leasehold and/or easement estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold and/or easement estate to a third party. Owner's consent shall not be required for the acquisition of the encumbered leasehold, easement or subeasement estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure.

13.2 Notice of Default: Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any default of Grantee, Owner shall give a Notice of Default to each Mortgagee of which it has written notice, concurrently with delivery of such notice to Grantee. In the event Owner gives a Notice of Default, the following provisions shall apply:

(a) The Mortgagee shall have the same period after receipt of the Notice of Default to remedy the default, or cause the same to be remedied, as is given to Grantee, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of seventy-five (75) days after receipt of the Notice of Default in the event of any Monetary Default; and (ii) sixty (60) days, for a total of one hundred eighty (180) days after receipt of the Notice of Default in the event of any Non-Monetary Default, provided that such 180-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Mortgagee to perfect its right to cure such Non-Monetary Default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Mortgagee acts with reasonable and continuous diligence. The Mortgagee shall have the absolute right to substitute itself for Grantee and perform the duties of Grantee hereunder for purposes of curing such default. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Grantee hereunder. Owner shall not take any action to terminate this Agreement in law or equity prior to the expiration of the cure periods available to a Mortgagee as set forth above.

(b) During any period of possession of the Property by a Mortgagee (or a receiver requested by such Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid all monetary charges payable by Grantee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Grantee's leasehold and easement estate by the Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment and/or deed in lieu of foreclosure, or by a purchaser at a foreclosure sale, and provided the Mortgagee has made the payments set forth in the previous sentence, this Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to Grantee's leasehold and/or easement estate shall, as promptly as reasonably possible, commence the cure of all of Grantee's defaults which are reasonably susceptible of being cured by the Mortgagee or party acquiring title, hereunder and thereafter diligently process such cure to completion, whereupon such defaults shall be deemed cured without incurring any default hereunder.

(c) Any Mortgagee or other party who acquires Grantee's leasehold and/or easement interest pursuant to foreclosure or assignment in lieu of foreclosure shall be liable to perform the obligations imposed on Grantee by this Agreement for such interest so long as such Mortgagee or other party has ownership of the leasehold and/or easement estate or possession of the Property.

(d) Neither the bankruptcy nor the insolvency of Grantee shall be grounds for terminating this Agreement as long as all material obligations of Grantee under the terms of this Agreement are performed by the Mortgagee in accordance with the terms hereunder.

(e) Nothing herein shall be construed to extend this Agreement beyond the Term or to require a Mortgagee to continue foreclosure proceedings after a default has been cured. If the default is cured and the Mortgagee discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

13.3 New Agreement to Mortgagee. If this Agreement terminates because of Grantee's default or if the leasehold and/or easement estate is foreclosed upon, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Owner shall, upon written request from any Mortgagee within ninety (90) days after such event, enter into a new agreement for the Property on the following terms and conditions:

(a) The terms of the new agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term, at the same rent and subject to the same terms and conditions set forth in this Agreement.

(b) The new agreement shall be executed within thirty (30) days after receipt by Owner of written notice of the Mortgagee's election to enter a new agreement, provided said Mortgagee: (i) pays to Owner all rent and other monetary charges payable by Grantee under the terms of this Agreement up to the date of execution of the new agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed; (ii) performs all other obligations of Grantee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Grantee and would have accrued under this Agreement up to the date of commencement of the new agreement, except those obligations which constitute non-curable defaults. Any new agreement granted to the Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Owner.

(c) At the option of the Mortgagee, the new agreement may be executed by a designee of such Mortgagee without the Mortgagee assuming the burdens and obligations of Grantee thereunder.

(d) If more than one Mortgagee makes a written request for a new agreement pursuant hereto, the new agreement shall be delivered to the Mortgagee requesting such new agreement whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(e) The provisions of this Section 13 shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 13 were a separate and independent contract made by Owner, Grantee and such Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new agreement, such Mortgagee may use and enjoy said Property without hindrance by Owner or any person claiming by, through or under Owner, provided that all of the conditions for a new agreement as set forth herein are complied with.

13.4 Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as there exists an unpaid Mortgage of which Owner has received written notice, this Agreement shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or accept a cancellation, termination or release of this Agreement from Grantee prior to expiration of the Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee.

13.5 No Waiver. No payment made to Owner by a Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and a Mortgagee, having made any payment to Owner pursuant to Owner's wrongful, improper or mistaken notice or demand, shall be entitled to the return of any such payment.

13.6 No Merger. There shall be no merger of this Agreement, or of the leasehold or easement estate created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or the leasehold estate or the easement estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property and all persons (including Mortgagee) having an interest in this Agreement or in the

leasehold estate or in the estate of Owner and Grantee shall join in a written instrument effecting such merger and shall duly record the same.

13.7 Estoppel Certificates, Etc. Owner and Grantee shall execute such estoppel certificates (certifying, to such party's knowledge, as to such matters as may be reasonably requested by the other party, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Owner or Grantee, any transferee of Grantee or Mortgagee may reasonably request from time to time; provided that all such documents shall be in a form reasonably acceptable to the party providing the estoppel certificate. The failure of either party to deliver any estoppel certificate within ten (10) business days after written request therefor shall be conclusive evidence that (i) this Agreement is in full force and effect and has not been modified; (ii) any amounts payable by Grantee to Owner have been paid through the date of such written request; (iii) there are no uncured defaults by Grantee or Owner; and (iv) the other certifications requested in the estoppel, are in fact, true and correct.

14. Termination.

14.1 Grantee's Right to Terminate. Grantee shall have the right to terminate this Agreement as to all or any part of the Property at any time and without cause, effective upon written notice to Owner from Grantee and payment of the Termination Fee (defined below). As used herein, "Termination Fee" means a fee equal to the net present value (calculated using a discount rate of 6%) of the lesser of (i) all Operating Fees remaining to be paid to Owner by Grantee during the next three (3) years of the Term and (ii) all Operating Fees remaining to be paid to Owner by Grantee during the remainder of the Term, excluding any extensions which have not been exercised.

14.2 Owner's Right to Terminate. Subject to Section 12.4, Owner shall have the right to terminate all or any portion of its rights in this Agreement after the fifth (5th) anniversary of the Effective Date if, at the time Owner's written termination notice is delivered, Grantee has not commenced construction of Solar Facilities for the Project on or near the Property. The terms "commencing construction" and "commencement of construction" as used in this Agreement shall mean that date on which Grantee begins excavation of foundations on the Property.

14.3 Effect of Termination.

(a) Upon termination of this Agreement, Grantee shall, as soon as practicable thereafter, but not later than nine (9) months after the termination, remove above-ground and below-ground (to a depth of three (3) feet below grade) Solar Facilities from the Property, without additional charge or rental for such entry and removal, and without such entry constituting a holdover. All Property disturbed by Grantee shall be restored to a condition reasonably similar to its original condition as it existed upon the Effective Date.

(b) If Grantee fails to remove such Solar Facilities within nine (9) months of termination of this Agreement, or such longer period as Owner may provide by extension, then (i) Grantee shall be deemed to have relinquished all right, title and interest in and to any Solar Facilities which are then still on or under the Property, and Owner shall thereafter have the right to sell, store, use, destroy, or otherwise dispose of the same free from any claim of Grantee or any person claiming by, through or under Grantee; (ii) Owner shall have the right to restore the Property and remove, or to cause removal of, any property owned by Grantee to the extent required by Grantee under this Section 14.3, and the right to receive reimbursement, less the salvage value of the Solar Facilities, from Grantee for any remaining amounts reasonably incurred for removal and restoration of the Property, and (iii) Grantee shall reasonably cooperate with Owner's efforts to document the foregoing (after the remediation period has ended), which cooperation shall include, without limitation, executing assignments or other documents evidencing any change in ownership of Grantee's property pursuant to this Section 14.3.

15. Release of Property. The Parties acknowledged and agree that certain portions of the Property may not be suitable for development or construction of Solar Facilities. In the event that the Parties determine the location and dimensions of such portions of the Property, the Parties agree that it shall be in the best interest of Owner and Grantee to release such portions of the Property from this Agreement. Following any such release, neither Grantee nor any Mortgagee shall have an interest in and to any portion of the Property which has been released from this Agreement in accordance with this Section 15. The Parties shall adhere to the below process in effectuating any such release.

15.1 Upon receipt of a Release Request, Grantee shall use commercially reasonable efforts (acting in good faith) to obtain Local Approval (defined below) to enter into a Division Amendment (defined below). Grantee and Owner shall then use commercially reasonable efforts (working together in good faith) to execute any such Division Amendment within thirty (30) days of Grantee's confirmation of Local Approval of the same.

15.2 As used herein, "Division Amendment" means an amendment to this Agreement which releases from the terms of this Agreement (and any leasehold or easement estate created thereby) portions of the Property which are not necessary, desirable or useful for the Project.

15.3 As used herein, "Local Approval" means the approval of the following parties to Grantee's execution and delivery of a Division Amendment (and the subsequent operation of the same): (i) the Town of Brookhaven Industrial Development Agency, but only as long as such agency has an interest in the Project or the Property, (ii) the Town of Brookhaven Planning Board and any other state or local agency which has granted a permit to the Project, (iii) the Federal Energy Regulatory Commission, if applicable, and (iv) the Long Island Power Authority, if applicable.

15.4 As used herein, "Release Request" means a written request from Owner to Grantee, delivered after the Operations Date, which requests the release from the terms of this Agreement (and any leasehold or easement estate created thereby) of portions of the Property which are not necessary, desirable or useful for the Project.

15.5 Notwithstanding anything to the contrary set forth in Section 13.4, the Mortgagee shall not unreasonably withhold, condition or delay its consent to any release Request (defined below). In the event that a Mortgagee requires any payment in connection with its approval of a Release Request, Grantee shall pay all such amounts, and Owner shall have no obligation to pay the same.

16. Miscellaneous.

16.1 Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference, and the Term or any other time periods herein shall be extended for such period of time; provided however, that no event of Force Majeure shall excuse, relieve, or in any way reduce Grantee's obligation to pay the amounts due pursuant to Section 4 hereof. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood, or other casualty, condemnation or accident; strikes or labor disputes; war, acts of terrorism, civil strife or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a Party hereto.

16.2 Confidentiality. To the fullest extent allowed by law, Owner shall maintain in the strictest confidence, and Owner shall require each Related Person of Owner to maintain in the strictest confidence, for the sole benefit of Grantee, all information pertaining to the financial terms of or payments under this Agreement, Grantee's site or product design, methods of operation, methods of construction,

power production or availability of the Solar Facilities, and the like, whether disclosed by Grantee or discovered by Owner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or any Related Person of Owner, or (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity. To the fullest extent permitted by law, Owner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Grantee. Notwithstanding the foregoing, Owner may disclose such information to any auditor or to Owner's family members, lenders, attorneys, accountants and other personal advisors; any prospective purchaser of or lenders for the Property; or pursuant to lawful process, subpoena or court order; provided Owner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

16.3 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Owner and Grantee and, to the extent provided in any assignment or other transfer under Section 10 hereof, any transferee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Grantee in this Agreement shall be deemed to include transferees of Grantee that hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

16.4 Memorandum/Recording. At Grantee's option: (i) Grantee may record a copy of this Agreement, excluding Exhibit B, or (ii) upon request from Grantee, Owner shall execute in recordable form, and Grantee may then record, a memorandum of this Agreement substantially in the form of Exhibit D attached hereto, incorporating only those non-substantive changes to the form as may be required by the applicable jurisdiction in which recording is sought and to reflect the terms of this Agreement. Owner hereby consents to the recordation of the interest of a transferee of Grantee in the Property. With respect to the Operations Term, upon request from Grantee, Owner shall execute, in recordable form, and Grantee may then record, a memorandum evidencing the Operations Term; provided that the execution of such memorandum is not necessary for such Operations Term to be effective.

16.5 Notices. All notices or other communications required or permitted by this Agreement, including payments to Owner, shall be in writing and shall be deemed given when personally delivered to Owner or Grantee, or in lieu of such personal delivery services, the same day if sent via facsimile with confirmation, the next business day if sent via overnight delivery or five (5) days after deposit in the United States mail, first class, postage prepaid, certified, addressed as follows:

If to Owner:

PHIE Shoreham LLC
One S. Wacker Drive, Suite 1810
Chicago, Illinois 60606
Attn: Jonathan Taiber
Fax: _____

If to Grantee:

Shoreham Solar Commons LLC
c/o Invenergy LLC
One S. Wacker Drive, Suite 1800
Chicago, Illinois 60606
Attn: General Counsel
Fax: 312-224-1444

with a copy to:

Donald J. Manikas
Walker Wilcox Matousek LLP
One N. Franklin, Suite 3200
Chicago, Illinois 60606
Fax: 312-244-6800

Either Party may change its address for purposes of this paragraph by giving written notice of such change to the other Parties in the manner provided in this paragraph.

16.6 Entire Agreement/Amendments. This Agreement, together with all Exhibits attached hereto, constitutes the entire agreement between Owner (and its respective successors, heirs, affiliates and assigns) and Grantee (and its respective successors, heirs, affiliates and assigns) respecting its subject matter, and supersedes any and all oral or written agreements. All of the provisions of the Exhibits shall be treated as if such provisions were set forth in the body of this Agreement and shall represent binding obligations of each of the Parties as part of this Agreement. Any agreement, understanding or representation respecting the Property, or any other matter referenced herein not expressly set forth in this Agreement or a previous writing signed by both Parties is null and void. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party unless in a writing signed by both Parties. Provided that no material default in the performance of Grantee's obligations under this Agreement shall have occurred and remain uncured, Owner shall cooperate with Grantee in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee for the purpose of implementing the provisions contained in this Agreement or for the purpose of preserving the security interest of any transferee of Grantee or Mortgagee.

16.7 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state courts located in the County. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is hereby waived. The prevailing Party in any action or proceeding for the enforcement, protection or establishment of any right or remedy under this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

16.8 Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the Parties agree that in no event shall the Term, or the term of any easement granted herein be longer than, respectively, the longest period permitted by applicable law.

16.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

16.10 Tax and Renewable Energy Credits. All benefits and incentives that result from Grantee's development and use of the Property for solar energy purposes shall accrue to the benefit of Grantee, including but not limited to any portfolio energy credits, rebates in lieu of portfolio energy credits, any reductions or credits in taxes and/or assessments, rebates, financing, federal, state and local grants, reductions in fees, participation in federal, state or local special programs or tax districts, and special programs of public utilities. If under applicable law, the holder of a leasehold or easement estate becomes ineligible for any tax credit, renewable energy credit or rebate, environmental credit or any other benefit or incentive for renewable energy established by any local, state or federal government, or any public utility, then, at Grantee's option, Owner and Grantee shall exercise good faith and negotiate an amendment to this Agreement or replace it with a different instrument so as to convert Grantee's interest in the Property to a substantially similar interest that makes Grantee eligible for such credit, benefit, rebate, or incentive.

16.11 No Partnership. Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more Parties in this Agreement.

16.12 Waiver of Right to Trial by Jury. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

16.13 Public Officials. Owner acknowledges that its receipt of monetary and other good and valuable consideration hereunder may represent a conflict of interest if Owner is a government employee or otherwise serves on a governmental entity with decision-making authority (a "**Public Official**") as to any rights Grantee may seek, or as to any obligations that may be imposed upon Grantee in order to develop and/or operate the Project ("**Development Rights**"), and Owner hereby agrees to (1) recuse him/herself from all such decisions related to Grantee's Development Rights unless such recusal is prohibited by law or is not reasonably practicable considering the obligations of such Public Official's position and (2) recuse him/herself from all such decisions related to Grantee's Development Rights if such recusal is required by law. If Owner is not required pursuant to (1) or (2) above to recuse him/herself from a decision related to Grantee's Development Rights, Owner shall, in advance of any vote or other official action on the Development Rights, disclose the existence of this Agreement (but not the financial terms therein) at an open meeting of the relevant governmental entity Owner serves on as a Public Official. Additionally, if Owner is a Public Official and any of Owner's spouse, child or other dependent has a financial interest in the Project, Owner shall disclose such relationship (but not the financial terms thereof) at an open meeting of the relevant governmental entity Owner serves on as a Public Official, prior to participation in any decision related to Grantee's Development Rights.

[The Remainder of this Page is Intentionally Left Blank. Signature Page to Follow]

IN WITNESS WHEREOF, Owner and Grantee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

OWNER:

PHIE SHOREHAM LLC,
a Delaware limited liability company

By: *[Signature]*
Name: Michael Polsky
Title: Manager

ACKNOWLEDGMENT OF OWNER

STATE OF IL)
) SS.
COUNTY OF COOK)

Personally came before me this 20th day of February, 2017,
MICHAEL POLSKY who executed the foregoing instrument as MANAGER of
PHIE Shoreham LLC, and acknowledged the same.



(S E A L)

Name: *Cathy L. Harvey*
Notary Public, State of ILLINOIS
My Commission Expires: 10/9/2017

GRANTEE:

SHOREHAM SOLAR COMMONS LLC,
a Delaware limited liability company

By: Bryan Schuel
Name: _____
Title: _____



ACKNOWLEDGMENT OF GRANTEE

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

Personally came before me this 28th day of February, 2017,
Bryan Schuel who executed the foregoing instrument as Vice President of Shoreham
Solar Commons LLC, and acknowledged the same.



(SEAL)
Name: Bianca Virgili
Notary Public, State of Illinois
My Commission Expires: 7-20-2017

SCHEDULE A

SCHEDULE OF DEFINITIONS

“Act” means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State, enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, together with Chapter 358 of the Laws of 1970 of the State, as amended.

“Agency” means (i) the Town of Brookhaven Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

“Agency Documents” means the Company Lease and the Lease Agreement.

“Agent” shall have the meaning set forth in Section 5.2(d).

“Approving Resolution” or “Authorizing Resolution” means the resolution adopted by the Agency on June 8, 2016, authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

“Authorized Representative” means, in the case of the Agency, the Chairman, the Vice Chairman, the Secretary, the Assistant Secretary, the Executive Director or any member or officer of the Agency and such additional persons as, at the time, are designated to act on behalf of the Agency; and in the case of the Company, the an officer and such additional persons as, at the time, are designated to act on behalf of the Company.

“Bill of Sale” means the Bill of Sale, dated the Closing Date, given by the Company to the Agency with respect to the Equipment, as the same may be amended from time to time.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York, or any city in which the principal office of the Lender, if any, is located are authorized by law or executive order to remain closed.

“Closing Date” means February 28, 2017.

“Company” means Shoreham Solar Commons LLC, a limited liability company, organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York and its successors and assigns.

“Company Documents” means the Bill of Sale, the Company Lease and the Lease Agreement.

“Company Lease” means the Company Lease Agreement, dated as of February 1, 2017 by and between the Company and the Agency, as the same may be amended from time to time.

“Company Sales Tax Savings” means all Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent on behalf of the

Company, pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

“Completion Date” means the date of completion of the Facility as certified pursuant to Section 3.6 of the Lease Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

“Construction Period” means the period beginning on the earlier of (a) Closing Date and (b) the date of commencement of the Project Work of the Facility, and ending on the Completion Date.

“Disposal” has the same meaning as given to that term in the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, (42 U.S.C. Section 6901 et seq.)

“Eligible Items” shall mean the following items of personal property and services, but excluding any Ineligible Items, with respect to which the Company and any Agent shall be entitled to claim a Sales Tax Exemption in connection with the Facility: (i) purchases of materials, goods, personal property and fixtures and supplies that will be incorporated into and made an integral component part of the Facility; (ii) purchases or leases of any item of materials, goods, machinery, equipment, furniture, furnishings, trade fixtures and other tangible personal property having a useful life of one year or more; (iii) with respect to the eligible items identified in (ii) above; purchases of freight, installation, maintenance and repair services required in connection with the shipping, installation, use, maintenance or repair of such items; provided that maintenance shall mean the replacement of parts or the making of repairs; (iv) purchases of materials, goods and supplies that are to be used and substantially consumed in the course of construction or renovation of the Facility (but excluding fuel, materials or substances that are consumed in the course of operating machinery and equipment or parts containing fuel, materials or substances where such parts must be replaced whenever the substance is consumed); and (v) leases of machinery and equipment solely for temporary use in connection with the construction or renovation of the Facility.

“Environment” means any water or water vapor, any land, including land surface or subsurface, air, fish, wildlife, flora, fauna, biota and all other natural resources.

“Environmental Laws” means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection, preservation or remediation of the Environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, written and published policies, guidelines, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

“Environmental Permits” means all permits, licenses, approvals, authorizations, consents or registrations required by any applicable Environmental Law in connection with the ownership, construction, renovation, equipping, use and/or operation of the Facility, for the storage,

treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances or the sale, transfer or conveyance of the Facility.

“Equipment” means all machinery, equipment and other personal property used and to be used in connection with the Facility as described in Exhibit B to the Lease Agreement.

“Event of Default” means (a) when used with respect to the Lease Agreement, any of the events defined as Events of Default by Section 10.1 of the Lease Agreement, and (b) when used with respect to any Mortgage, any of the events defined as Events of Default in such Mortgage.

“Facility” means, collectively, the Land, the Improvements and the Equipment, leased and subleased to the Company pursuant to the Lease Agreement.

“Form ST-60” shall mean NYSDTF Form ST-60 “IDA Appointment of Project Operator or Agent” or such additional or substitute form as is adopted by NYSDTF to report the appointment of project operators or agents with respect to industrial development agency transactions.

“Form ST-123” shall mean NYSDTF Form ST-123 “IDA Agent or Project Operator Exempt Purchase Certificate” or such additional or substitute form as is adopted by NYSDTF for use in completing purchases that are exempt for Sales and Use Taxes with respect to industrial development agency transactions.

“Form ST-340” shall mean NYSDTF Form ST-340 “Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority” or such additional or substitute form as is adopted by NYSDTF to report Company Sales Tax Savings with respect to industrial development agency transactions.

“FTE” shall mean full time equivalent employees, calculated on the basis of 35 hours per week, who are employees of the Company or any subsidiary or affiliates of the Company, or any consultants, contractors or subcontractors of the Company, or any subsidiary or affiliate of the Company, whose place of employment or workplace is located at the Facility.

“Ground Lease” shall mean that certain Solar Lease and Easement Agreement from PHIE Shoreham LLC to the Company, dated February 27, 2017, as the same may be amended from time to time.

“Hazardous Substance” means, without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, or toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental

Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

“Improvements” means all those buildings, improvements, structures and other related facilities (i) affixed or attached to the Land, and (ii) not part of the Equipment, all as they may exist from time to time.

“Independent Accountant” shall mean an independent certified public accountant or firm of independent certified public accountants selected by the Company and approved by the Agency (such approval not to be unreasonably withheld or delayed).

“Independent Counsel” means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Agency, the Company.

“Ineligible Items” shall mean the following items of personal property and services with respect to which the Company and any Agent shall not be entitled to claim a Sales Tax Exemption in connection with the Facility:

- (i) vehicles of any sort, including watercraft and rolling stock;
- (ii) personalty having a useful life of one year or less;
- (iii) any cost of utilities, cleaning services or supplies or other ordinary operating costs;
- (iv) ordinary office supplies such as pencils, paper clips and paper;
- (v) any materials or substances that are consumed in the operation of machinery;
- (vi) equipment or parts containing materials or substances where such parts must be replaced whenever the substance is consumed; and
- (vii) maintenance of the type as shall constitute janitorial services.

“Land” means the real property leased by the Agency to the Company pursuant to the Lease Agreement and more particularly described in Exhibit A attached thereto.

“Lease Agreement” means the Lease and Project Agreement, dated as of February 1, 2018 by and between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, as the same may be amended from time to time.

“Lease Term” means the duration of the leasehold estate created by the Lease Agreement as specified in Section 4.2 of the Lease Agreement.

“Lender” means any lender making a Loan to the Company to finance in whole or in part the Project Work, the acquisition and/or development of the Facility or any portion thereof.

“Lien” means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term “Lien” includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

“Loan” has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

“Loan Documents” has the meaning ascribed to such term in Section 12.4 of the Lease Agreement.

“Loss Event” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Maximum Company Sales Tax Savings Amount” shall mean the aggregate maximum dollar amount of Company Sales Tax Savings that the Company and all Agents acting on behalf the Company are permitted to receive under this Lease Agreement, which shall equal \$7,000,000.00, or such maximum dollar amount as may be determined by the Agency pursuant to such additional documents as may be required by the Agency for such increase.

“Mortgage” means any mortgage and security agreement granted by the Agency and the Company to a Lender which grants a mortgage lien on and security interest in the Facility in favor of the Lender as security for such Lender’s Loan to the Company.

“Mortgage Recording Tax Exemption” has the meaning ascribed to such term in Section 5.3 of the Lease Agreement.

“Net Proceeds” means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such gross proceeds.

“NYSDTF” means the New York State Department of Taxation and Finance.

“Organizational Documents” means (i) in the case of an entity constituting a limited liability company, the articles of organization or certificate of formation, and the operating agreement of such entity, (ii) in the case of an Entity constituting a corporation, the articles of incorporation or certificate of incorporation, and the by-laws of such entity, and (iii) in the case of an entity constituting a general or limited partnership, the partnership agreement of such entity

“Permitted Encumbrances” means, with respect to the Facility, (i) exceptions to title set forth in the Title Report, (ii) the Company Lease, (iii) the Lease Agreement, (iv) utility, access and other easements and rights-of-way, restrictions and exceptions that do not materially impair

the utility or the value of the Property affected thereby for the purposes for which it is intended, (v) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens which are approved in writing by the Lender, if any, or its counsel and, if no Lender, then by the Agency or its counsel, (vi) Liens for taxes not yet delinquent, (vii) any Mortgage granted to a Lender and (viii) purchase money security interests and blanket liens.

“Person” or “Persons” means an individual, partnership, limited liability partnership, limited liability company, corporation, trust or unincorporated organization, or a government agency, political subdivision or branch thereof.

“PILOT Payments” has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

“Plans and Specifications” means the plans and specifications, if any, for the Improvements, prepared for the Company and approved by the Agency, as revised from time to time in accordance with the Lease Agreement.

“Project” means the acquisition, construction, renovation, and equipping of a solar electric generating facility, including (i) the acquisition of an approximately 150 acre parcel of land located at 24 Cooper Street, Shoreham, Town of Brookhaven, Suffolk County, New York (and further identified as Tax Map No. 200-0200126.00-02.00-002.000; 0200-127.00-01.00-003.000; 0200-127.00-01.00-006.00; 0200-148.00-02.00-005.000; 0200-148.00-02.00-006.000) (the “**Land**”), and the demolition of the existing residence thereon, the renovation of existing structures (including outbuildings and clubhouse) for use as offices, storage, and related uses by the Company, the construction of a solar powered electric generation facility to be located thereon (the “**Improvements**”), the acquisition and installation therein of certain equipment and personal property consisting of an approximately 24.9MW (AC) ground-mounted modules, stationary/non-tracking solar array installed on mounting racks, including approximately 125,944, 72-cell polycrystalline modules, combiner boxes, inverters, transformers, and other associated interconnect infrastructure to connect to LIPA’s power grid (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be leased and subleased to the Company and used by the Company for its primary use as a solar electric generating facility.

“Project Application Information” means the application and questionnaire dated January 5, 2016, submitted to the Agency by or on behalf of the Company, for approval by the Agency of the Project, together with all other letters, documentation, reports and financial information submitted in connection therewith.

“Project Work” means the work required to complete the Project.

“Prime Rate” means (i) if no Lender, the rate designated by The Wall Street Journal from time to time as its “prime rate”, or (ii) if a Lender exists, the rate designated by the Lender from time to time as its “prime rate”.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

“Public Purposes” shall mean the State’s objective to create industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

“Real Property Tax Abatements” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Recaptured Benefits” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Recapture Event” has the meaning ascribed to such term in Section 5.4 of the Lease Agreement.

“Release” has the meaning given to that term in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), and the regulations promulgated thereunder.

“Sales Tax Agent Authorization Letter” shall mean the Sales Tax Agent Authorization Letter, substantially in the form set forth in Exhibit E to the Lease Agreement – “Form of Sales Tax Agent Authorization Letter” and to be delivered in accordance with Section 5.2(d) of the Lease Agreement.

“Sales Tax Exemption” shall mean an exemption from Sales and Use Taxes resulting from the Agency’s participation in the Facility.

“Sales Tax Registry” shall mean the Sales Tax Registry in the form set forth in Exhibit F.

“Sales and Use Taxes” shall mean local and State sales and compensating use taxes and fees imposed pursuant to Article 28 of the New York State Tax Law, as the same may be amended from time to time.

“Schedule of Definitions” means the words and terms set forth in this Schedule of Definitions attached to the Lease Agreement, as the same may be amended from time to time.

“SEQR Act” means the State Environmental Quality Review Act and the regulations thereunder.

“Special Provisions” has the meaning ascribed to such term in Section 5.2 of the Lease Agreement.

“State” means the State of New York.

“State Sales and Use Taxes” shall mean sales and compensating use taxes and fees imposed by Article 28 of the New York State Tax Law but excluding such taxes imposed in a city by Section 1107 or 1108 of such Article 28, as the same may be amended from time to time.

“State Sales Tax Savings” shall mean all Sales Tax Exemption savings relating to State Sales and Use Taxes realized by or for the benefit of the Company, including any savings realized by any Agent, pursuant to this Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility.

“Substitute Facilities” means facilities of substantially the same nature as the proposed Facility.

“Taxes on the Facility” has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

“Taxing Authorities” has the meaning ascribed to such term in Section 5.1 of the Lease Agreement.

“Tenant Agency Compliance Agreement” means an agreement in the form attached to the Lease Agreement as Exhibit I between the Agency and a sublessee of the Facility.

“Termination Date” shall mean such date on which the Sales Tax Exemption authorization may terminate pursuant to the terms and conditions of Section 5.2 of the Lease Agreement or Section 5.1 of the Equipment Lease Agreement.

“Title Report” means Certificate of Title No. 1716-28022 issued by Chicago Title Insurance Company to the Agency on February 24, 2017.

“Transaction Counsel” means the law firm of Nixon Peabody LLP.

“Transaction Documents” means the Agency Documents and the Company Documents.

“Unassigned Rights” means the rights of the Agency and moneys payable pursuant to and under Sections 4.3, 4.4, 5.1, 5.2, 5.4, 6.4(c) and (d), 6.7, 8.1, 8.2, 8.5, 8.7, 8.8, 8.10, 9.3, 10.2(a), 10.4, 11.2, 11.3 and 14.8 and Article XIII of the Lease Agreement.