

FTS PROJECT OWNER 2, LLC

and

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BROOKHAVEN, NEW YORK)

COMPANY LEASE AGREEMENT

Dated as of October 1, 2015

Town of Brookhaven Industrial Development Agency
(FTS Project Owner 2, LLC 2015 Facility)

THIS COMPANY LEASE AGREEMENT, dated as of October 1, 2015 (this “**Company Lease**”), is by and between FTS PROJECT OWNER 2, 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 2180 South 1300 East, Suite 600, Salt Lake City, Utah 84106 (the “**Company**”), and 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**”).

RECITALS:

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; and

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the “**State**”); 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 to undertake the acquisition, construction, equipping and leasing of the Facility defined below; and

WHEREAS, the Agency has agreed to assist in the acquisition of an approximately 59.84 acre parcel of land located at 112 State Route 25A, Shoreham, Town of Brookhaven, New York (the “**Land**”), the construction of an approximately 21.8 acre solar photovoltaic (PV) energy farm thereon (the “**Improvements**”), and the equipping thereof, with a capacity to produce 9.5 MW of alternating current atop racking systems supported by a screw-in foundation design, associated invertors, transformers, interconnect pads, landscaping/grass, gravel driveways, drainage reserve areas and pavement (the “**Equipment**” all in accordance with the site plan approval dated as of June 12, 2014 and revised as of December 22, 2014; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be leased by the Agency to the Company and used by the Company as a solar electric generating facility; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to acquire, construct and equip the Facility in accordance with the Plans and Specifications; and

WHEREAS, the Company has agreed to lease the Land and the Improvements to the Agency pursuant to and in accordance with this Company Lease, and the Company has agreed to transfer to the Agency title to the Equipment pursuant to a Bill of Sale, dated the Closing Date (the “**Bill of Sale**”); and

WHEREAS, the Agency has agreed to sublease and lease the Facility to the Company pursuant to a certain Lease Agreement, dated as of October 1, 2015 (the “**Lease Agreement**”), by and between the Agency and the Company.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties mutually agree as follows:

The Company hereby leases the Land (described in Exhibit A attached hereto) and the Improvements to the Agency for the annual rent of \$1.00 for a term commencing on the Closing Date and terminating at 11:59 p.m. on November 30, 2036 (the “**Lease Term**”).

This Company Lease shall terminate on the earliest of (i) the expiration of the Lease Term, (ii) the termination of the Lease Agreement pursuant to Article X or Article XI thereof, and (iii) the date upon which the benefits afforded under the PILOT Agreement (as defined in the Lease Agreement) shall no longer be effective or the same shall be terminated. Notwithstanding the foregoing, the parties agree to cooperate to deliver the termination documents necessary to remove the memorandum of this Company Lease and the memorandum of Lease Agreement of record and reconvey the Equipment to the Company.

The Company agrees to keep, perform and observe, from and after the date hereof, all of the terms, covenants, conditions, obligations and other provisions contained in the Lease Agreement. The Company agrees further that it shall indemnify, defend and hold harmless the Agency from and against all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings and attorneys’ fees arising out of or in connection with the Lease Agreement or this Company Lease and shall defend the Agency in any suit, action or proceeding, including appeals, for personal injury to, or death of, any person or persons, or for any loss of or damage to property of persons, or for other claims arising out of the acts or omissions of the Company or any of its officers, directors, agents or employees, 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, officers, members, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents (except the Company) or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnitees shall include all expenses incurred by the Agency, including, without limitation, reasonable attorneys’ fees to enforce this Company Lease, the Lease Agreement or any other document to which the Company and the Agency are parties, and with respect to third party claims.

The Agency, for itself and its successors and assigns, hereby agrees to lease the Land and the Improvements from the Company on the terms and conditions contained herein.

The Company and the Agency acknowledge that the Agency will lease or sublease the Facility, as applicable, to the Company pursuant to the Lease Agreement. The Company and the Agency agree that while this Company Lease and the Lease Agreement remain in full force and effect, (i) there shall be no merger of the Company’s fee estate in the Land and the Improvements and the Company’s subleasehold estate in the Land and Improvements created under the Lease Agreement; (ii) the Agency shall continue to have, use and enjoy the leasehold estate in the Land and the Improvements created under this Company Lease; and (iii) the Agency shall not convey, assign or sublease any interest in this Company Lease or the Facility to any party other than a successor agency.

This Company Lease 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/or the Company on the Facility or any portion thereof and to any and all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

This Company Lease shall not be recorded by either party hereto. The Agency shall cause a memorandum of lease with respect hereto to be recorded in the Suffolk County Clerk's office. The parties hereto shall take such additional actions and execute such additional documents as may be required by any lender providing financing for the Facility to record evidence of this Company Lease.

All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, or delivered by any national 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.

The Company:

FTS Project Owner 2, LLC
2180 South 1300 East, Suite 600
Salt Lake City, Utah 84106
Attention: Sean McBride, General Counsel

With a copy to:

Weber Law Group LLP
290 Broadhollow Road, Suite 200E
Melville, New York 11747-4818
Attention: Garrett L. Gray, 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, return receipt requested, and one Business Day after mailing with respect to overnight mail.

If a party hereto determines in its reasonable discretion that any further instruments or other actions are necessary or desirable to carry out the terms of this Company Lease, the other party shall, at the Company's sole cost and expense, execute and deliver all such instruments and take all such actions, without additional consideration.

Capitalized terms used in this Company Lease and not otherwise defined in this Company Lease shall have the meanings assigned thereto in Schedule A to the Lease Agreement.

This Company Lease 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.

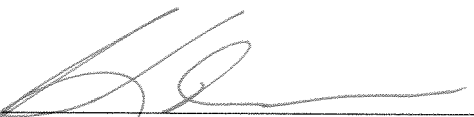
This Company Lease shall be governed exclusively by the applicable laws of the State of New York, without regard or reference to its conflict of laws principles.

This Company Lease and the conveyance made hereby shall be subject to the trust fund provisions of Section 13 of the Lien Law of the State.

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

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

FTS PROJECT OWNER 2, LLC,
a Delaware limited liability company

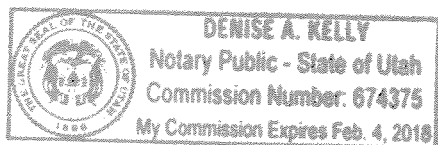
By: 
Name: ~~Ryan Creamer~~ Steve Creamer
Title: ~~Chief Executive Officer~~ Authorized Person

STATE OF UTAH)
) ss.:
COUNTY OF SALT LAKE)

On the 14th day of October in the year 2015 before me, the undersigned, personally appeared ~~Ryan Creamer~~ ^{Steve Creamer}, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public



Company Lease Agreement
Signature Page 1 of 2

**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 SUFFOLK)

On the 21st day of October in the year 2015, 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 within instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

William F. Weir
Notary Public

WILLIAM F. WEIR
Notary Public, State of New York
Registration #02WE4991594
Qualified in Monroe County
Certificate Filed in Monroe County
Commission Expires: 02/03/18

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Signature Page 2 of 2

EXHIBIT A

Legal Description of Real Property

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

BEGINNING at a point on the easterly side of Miller Avenue, said point being distant 565.00 feet northerly from the intersection of the easterly side of Miller Avenue and the northerly side of Cooper Street;

RUNNING THENCE along the easterly side of Miller Avenue, North 06° 05' 47" West, 1,963.29 feet;

THENCE North 53° 54' 13" East, 228.00 feet;

THENCE North 06° 05' 47" West, 546.30 feet to the southerly side of Sound Avenue (S.R. 25A);

Thence along the southerly side of Sound Avenue (S.R. 25A) the following two (2) courses and distances:

1. South 82° 21' 40" East, 392.07 feet;
2. Along an arc of a curve bearing to the left having a radius of 8,056.00 feet a distance of 250.15 feet;

THENCE South 07° 36' 20" West, 162.84 feet;

THENCE South 82° 23' 40" East, 303.07 feet;

THENCE South 06° 38' 43" East, 1,569.03 feet;

THENCE South 06° 17' 16" East, 682.22 feet;

THENCE Due West 1,132.33 feet to the easterly side of Miller Avenue and **THE POINT OR PLACE OF BEGINNING.**