
Application for Financial Assistance

County of Clinton Industrial Development Agency (CCIDA)
137 Margaret Street, Suite 209
Plattsburgh, NY 12901
infoatIDAs@gmail.com

*A nonrefundable administrative application fee of \$1500 must be submitted at the time of the application, of which, \$750 will be applied to the project's closing cost. Checks may be made payable to: **The County of Clinton IDA.***

Please submit one (1) electronic copy and two (2) hard copies of the application (and any attachments) and SEQR (if applicable) to the address above. Include the check with the hard copies.

***ALL APPLICATIONS MUST BE SUBMITTED TWO WEEKS PRIOR TO THE
REGULAR SCHEDULED CCIDA MEETING***

*For a copy of the meeting schedule as well as the Uniform Tax Exempt Policy (UTEP) go to
www.clintoncountyida.com*

Application Updated: 7/2016

Note to Applicant:

The information requested by this application is necessary to determine the eligibility of your project for Clinton County Industrial Development Agency (CCIDA) benefits. Please answer all questions, inserting "none" or "not applicable" where appropriate. If you are providing an estimate, please indicate by inserting "est." after the figure. Attach additional sheets if more space is needed for a response than provided.

Please submit two (2) hard copies of the application (and any attachments) and SEQR (if applicable) to **CCIDA, 137 Margaret Street, Suite 209, Plattsburgh, NY 12901 ATTN: Executive Director**. In addition, please send an electronic version of the entire application and SEQR (if applicable) as well as all attachments to infoatIDAs@gmail.com. Include within the hardcopy, a check made payable to the County of Clinton Industrial Development Agency in the amount of \$1500. **Submissions must be made two (2) weeks prior to the regular scheduled meetings of the CCIDA (2nd Monday of each month unless otherwise noted).**

Upon submission of this application to the CCIDA, the application becomes a public document. Be advised that any action brought before the CCIDA is public information. All agendas are issued and posted on the CCIDA's website seven (7) days prior to Board meetings. If there is information that the applicant feels is of a proprietary nature, please identify as such, and that information will be treated confidentially to the extent permitted by the law.

By signing and submitting this application, the Applicant acknowledges that it has received a copy of the CCIDA's Uniform Tax Exempt Policy (UTEP) and all other policies mentioned. Policies can be obtained at www.clintoncountyida.com.

A project financed through the CCIDA involves the preparation and execution of significant legal documents. These documents not only comply with New York State law but also conform to CCIDA policies in effect at time of closing (all policies are posted on the website). Please consult with an attorney before signing any documents in connection with the proposed project.

The applicant will receive an engagement letter from the CCIDA's legal counsel. The applicant will then be asked to sign the engagement letter acknowledging it understands that the project is responsible for **all** CCIDA legal costs related to the project, including when the project is re-conveyed. In addition, should the project not close and legal services have been rendered by the CCIDA legal counsel, the applicant will still be responsible for those costs.

If the project requires a public hearing, a representative from the applicant's organization is required to be present. A date will be coordinated by the CCIDA's legal counsel and/or Executive Director. If you have any questions regarding the application or the process, feel free to contact the CCIDA's Executive Director at (518) 565-4600 or infoatIDAs@gmail.com.

PART I: Project Information

PROJECT'S CCIDA APPLICATION # _____ (Official Use)

Section A: Assistance

Type of Financial Assistance Requested - [Check One]

Straight Lease - ☒ Bond Financing - ☐ Both - ☐ Other - ☐

If "Other," Explain: _____

Type of Benefits Project is Seeking – [Check All that Apply]

Real Estate

Mortgage

Exemption/
PILOT - ☒

Sales Tax Exemption –
☒

Recording Tax
Exemption- ☒

Tax-Exempt
Bonds – ☐

Other – ☐

**Note: If applicant is seeking bonds, a PILOT and/or exemption from sales and/or mortgage recording tax additional information will be required in Part II of this application.*

If Other, Explain: _____

Section B: Background

1.)

Company Name:	NY Mooers VI, LLC
Company Point of Contact:	Richard Chun
Address:	140 East 45 th Street, Suite 32B-1, New York, NY 10017
Phone Number:	646-998-6403
Point of Contact's e-mail:	rchun@rwc-legal.com
Company Website:	delawareriversolar.com
Company NAICS Code:	221114
Employer Identification Number (EIN):	82-3656242

2.) Business Type [Check One]:

☐ Private or Public Corporation

If Public, on what exchange is it listed? _____

☐ Subchapter S

☐ Sole Proprietorship

☐ General Partnership

☐ Limited Partnership

☒ Limited Liability Company/Partnership

☐ DISC

☐ Not-for-profit

☐ Other: _____

State of Incorporation (if applicable): _____

3.) Describe the nature of your business and its principal products and/or services:

Delaware River Solar, LLC ("DRS") is a community solar farm developer in New York State. DRS develops, constructs and maintains solar farms and sells the power generated by the facility to local residents and businesses. NY Mooers VI, LLC is an affiliate of DRS and is the Project Company for this project.

DRS, and its affiliates, have previously submitted five (5) Applications for assistance to the CCIDA. This current project is similar to prior submissions except that this application is for a larger (approximate [4MW]) facility as compared to prior applications that were approximate [2MW] facilities.

3a.) Will the project move its facility from another location in New York to Clinton County? Yes ☐ or No ☒

3b.) Will the project result in the abandonment of an existing facility in New York? Yes ☐ or No ☒

3c.) If "Yes" to 3a and/or 3b, is the reason for moving to another location in the state to remain competitive in your industry or the state? Yes ☐ or No ☐

If "Yes," please explain N/A

4.) Applicant's Stockholders, Directors and Officers (or Partners):

Stockholders/Directors/Officers	Name	Address	Business Affiliation/Percentage Ownership
CEO / Owner	Richard Winter	140 East 45 th Street Suite 32B-1 New York NY 10017	84%
President / Owner	John Tartaglia	140 East 45 th Street Suite 32B-1 New York, NY 10017	16%
Senior Vice President	Peter Dolgos	140 East 45 th Street Suite 32B-1 New York NY 10017	
Senior Vice President	Luke Duncan	140 East 45 th Street Suite 32B-1 New York NY 10017	

4a.) Has anyone on this list been convicted of a Felony? Yes [] or No [X]

If "Yes," Explain:

4b.) Has anyone on this list filed Bankruptcy? Yes [] or No [X]

If "Yes," Explain:

5.) Applicant's Counsel, Accountant and Bank References:

Applicant's Counsel	
Name:	Richard Chun
Firm:	Law Office of Richard W. Chun
Address:	1225 Franklin Avenue, Suite 325, Garden City, NY 11530
Phone:	646-998-6403
E-mail:	rchun@rwc-legal.com
Applicant's Accountant	
Name:	Stefanie Pervez
Firm:	CohnReznick
Address:	1301 6 th Avenue, New York, NY 10019
Phone:	212-297-0400
E-mail:	pervez@cohnreznick.com
Applicant's Bank Reference(s)	
Bank Name:	First Republic Bank
Address:	101 Pine Street, San Francisco, CA 94111
Phone:	415-288-7503
Website:	www.firstrepublic.com

6.) Project Type [Check All that Apply]:

- | | | | |
|---|--|---|--|
| <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Warehousing | <input type="checkbox"/> R & D | <input type="checkbox"/> Tax-Exempt |
| <input type="checkbox"/> Wind Farm | <input checked="" type="checkbox"/> Commercial | <input type="checkbox"/> Retail | <input type="checkbox"/> Medical |
| <input type="checkbox"/> Residential | <input type="checkbox"/> Recreation | <input type="checkbox"/> Adaptive Reuse | <input type="checkbox"/> Other |
| <input type="checkbox"/> Small Alternative Energy | <input type="checkbox"/> Distributive Service | <input type="checkbox"/> Tourism Destination Facility | <input type="checkbox"/> Industrial (includes pollution control) |

**See CCIDA Eligible Project Policy for definitions www.clintoncountynyida.com
Solar Energy Farm*

If "Other," please explain:

*For Retail and Tourism Projects **ONLY**—All others Skip to Question 7 **NOT APPLICABLE***

6a.) Retail Projects:

- Will the project's facility be used in making retail sales of physical goods to customers who visit the proposed facility? Yes ☐ or No ☐
- Will the project's facility be used in providing services to customers who physically visit the facility? Yes ☐ or No ☐
 - If "Yes" to either of the above, how much of the project's facility will be devoted to said use?
- Is the project a critical part of a larger, planned development in the community? Yes ☐ or ☐ No
- Has the project been endorsed by the local municipal chief executive officer or the local municipal governing body? Yes ☐ or No ☐
- Is the project located in a former Empire Zone? Yes ☐ or No ☐
- Is the project located in a Distressed Census tract (based on the latest decennial Census)? Yes ☐ or No ☐

(*Census Tract Data Available at www.census.gov)

6b.) Tourism Destination Facility Projects:

- Will the project attract and/or service a significant number of Tourists that come from outside the economic development region (ED Region Includes: Clinton, Essex, Franklin, Hamilton, St. Lawrence, Jefferson and Lewis Counties)? Yes ☐ or No ☐
 - If Yes, attach market analysis that demonstrates said attraction
- Is the project linked to other Tourism Facility Destinations in Clinton County? Yes ☐ or No ☐
- Will the project agree to pay sales tax and occupancy taxes related to the operation of the facility? Yes ☐ or No ☐
- If not operated by a not-for-profit, will the project agree to pay real estate

taxes and/or PILOT payments on said facility? Yes ☐ or No ☐

7.) Scope of Project [Check All that Apply]:

- ☐ Construction of a new building
- ☐ Acquisition of land
- ☐ Acquisition of existing building
- ☐ Renovations to existing building
- ☐ Construction of addition to existing building
- ☐ Acquisition of machinery and/or equipment
- ☒ Installation of machinery and/or equipment
- ☒ Other (specify) Installation of RACKING, solar panels and related wiring equipment

7a.) Have you filled out any environmental assessment forms with other government entities? Yes ☐ or No ☒ (If “yes,” attach) We have not submitted to the Town yet but will send relevant documentation to the IDA as we move forward with the process.

7b.) Has SEQR already been commenced by a lead government agency? Yes ☐ or No ☒ (If yes, please attach)

Note: All projects involving construction, expansion or modification of an existing site **must fill out **Part III - SEQR** of this application. If SEQR has already been determined and approved by the municipality please attached to Part III of this application.*

8.) Explain your proposed project in detail. This description should include explanation of all of the activities/operations which will occur due to this project; the location (address) and tax map data of the site; the dimensions of new/modifications building(s) & type of construction. Also attach photo of the site, preliminary plans, sketches and/or floor plans of proposed project:

1. A 4.484 MWAC solar farm to be constructed on 22-25 acres of open land.
2. The project address is County Route 11, Mooers, NY 12959 with a Tax ID for the parcel of 43.-1-16.11.
3. Note: Delaware River Solar, LLC (owner of NY Mooers VI, LLC) has previously submitted NY Mooers I, NY Mooers II, NY Mooers III, NY Mooers IV, LLC and NY Mooers V, LLC projects under Tax Map ID 58.-1-9 and 58.-1-7.2, all of which have been reviewed by the CCIDA.

Additional Information:

- 8(a) Estimated Start Date: 03/15/2021 (earliest)
- 8(b) Estimated Completion Date: 07/15/2021 (earliest)
- 8(c) Zoning Classification of the Project: Residential
- 8(d) Legal owner of the site or building: Larry Ashline
- 8(e) Most Recent use of the site and/or building: Agricultural
- 8(f) Municipality Project is located in: Mooers Forks
- 8(g) School District Project is located in: Northeastern Clinton
- 8(h) Is there an existing or proposed lease for this project? Yes ☒ or No ☐
(If yes, attach a copy). See attached Exhibit A.
- 8(i) Is there a purchase option or other legal or common control in the project? Yes ☐ or No ☒.
If yes, attach copy or describe participation: No, only the Lease as indicated in question 8(h) for lease of the project area site.
- 8(j) List the major equipment to be acquired as part of the project. Please provide a detailed inventory of said equipment when one becomes available. Racking, solar panels, inverters/transformers and electrical wiring compose the majority of the equipment.
- 8(k) Is there now or does the applicant believe there will be significant opposition to the proposed project? Yes ☐ or No ☒ Applicant has 5 constructed projects located in the same town as this proposed project, all approved by the Town of Mooers with no opposition.

9.) On-site Utilities and Providers:

Type:	Provider:
Water	---
Sewer	---
Electric	NYSEG (for interconnection of the solar facility)
Gas	---
Broadband	---

Section C : Project Costs

10.) What is the estimated Total Project Cost? (Note: More in-depth information will be required in Part II of this application)

Category	Costs
Land	\$ N/A
Building	\$ N/A
Equipment (1)	\$ 5,688,960
Other (2)	\$ 3,924,247
Total:	\$ 9,613,207

If citing "Other," Explain:

- (1) Equipment amount represents EPC equipment and margins.
- (2) Other represents NYSEG Interconnection Cost, surveys, environmental studies, engineering, development fees, construction labor, financing costs, other soft costs.

10(a) Both Clinton County and the CCIDA have policies that encourage the use of local labor. Is the applicant willing to consider the use of local labor? Yes ☒ or No ☐

11.) Financing Sources:

11(a) State the sources reasonably necessary for the financing of the Project site, the construction of the proposed buildings and the acquisition and installation of any machinery and equipment necessary or convenient in connection therewith, and including any utilities, access roads or appurtenant facilities, using the following categories:

<u>Description of Sources</u>	<u>Amount</u>
Private Sector Financing	\$3,676,286
Public Sector	---
Federal Programs	---
State Programs (NYSERDA)(50%COD)	\$ 492,480
Local Programs	---
Applicant Equity	\$1,920,073
Other (specify, e.g., tax credits)	
Tax Equity Investors (Private Sector)	\$ 3,524,368
TOTAL AMOUNT OF PROJECT FINANCING SOURCES	\$9,613,207

11(b) Have any of the above expenditures already been made by the applicant? Yes X; No . If yes, indicate particulars.

[Environmental Reviews, Surveys, Engineering, Site Layouts, Interconnection Studies, and Interconnection Deposits. Total to-date approximately \$205,000]

11(c) Amount of loan requested: \$ NA ;
Maturity requested: NA years.

11(d) Has a commitment for financing been received as of this application date, and if so, from whom?
Yes ; No X Institution Name: NA

11(e) Provide name and telephone number of the person we may contact.
Name: NA Phone: NA

11(f) The percentage of Project costs to be financed from public sector sources is estimated to equal the following: 5 %

11(g) The total amount estimated to be borrowed to finance the Project is equal to the following:
\$3,676,286

**Note: Attach an outline of the financing package that is expected to be utilized for this project including dollar amounts and funding sources.*

Section D: Employment Information

12.) Employment Impact

12(a) Indicate the number of people presently employed at the Project site and the additional number that will be employed at the Project site at the end of the first and second years after the Project has been completed, using the tables below for (1) employees of the Applicant, independent contractors, and (3) employees of independent contractors. (Do not include construction workers). Also indicate below the number of workers employed at the Project site representing newly created positions as opposed to positions relocated from other project sites of the applicant. Such information regarding relocated positions should also indicate whether such positions are relocated from other project sites financed by obligations previously issued by the Agency. Applicant has no persons employed at the Project Site. The solar facility is remotely monitored and as such there will be no permanent on-site employees after construction.

TYPE OF EMPLOYMENT Employees of Applicant					
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
Present Full Time					
Present Part Time					
Present Seasonal					
First Year Full Time					
First Year Part Time					
First Year Seasonal					
Second Year Full Time					
Second Year Part Time					
Second Year Seasonal					

TYPE OF EMPLOYMENT Independent Contractors					
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
Present Full Time					
Present Part Time					
Present Seasonal					
First Year Full Time					
First Year Part Time					
First Year Seasonal					
Second Year Full Time					
Second Year Part Time					
Second Year Seasonal					

TYPE OF EMPLOYMENT Employees of Independent Contractors					
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled	Totals
Present Full Time					
Present Part Time					
Present Seasonal					
First Year Full Time					
First Year Part Time					
First Year Seasonal					
Second Year Full Time					
Second Year Part Time					
Second Year Seasonal					

- B. Indicate below (1) the estimated salary and fringe benefit averages or ranges and (2) the estimated number of employees residing in the North Country Economic Development Region for all the jobs at the Project site, both retained and created, listed in the tables described in subsection A above for each of the categories of positions listed in the chart below.

RELATED EMPLOYMENT INFORMATION				
	Professional or Managerial	Skilled	Semi-Skilled	Un-Skilled
Estimated Salary and Fringe Benefit Averages or Ranges				
Estimated Number of Employees Residing in the North Country Economic Development Region ¹				

- C. Please describe the projected timeframe for the creation of any new jobs with respect to the undertaking of the Project:

* FTE: Any combination of (2) two or more part-time jobs that when combined together, constitute the equivalent of a job of at least 35 hours per week.

¹ The North Country Economic Development Region consists of the following counties: Clinton, Essex, Franklin, Hamilton, Jefferson, Lewis, and St. Lawrence.

Section E: Representations and Certification by Applicant

Peter Dolgos (name of authorized representative of the Applicant submitting application) deposes and says that he/she is SVP (Title) of NY Mooers VI, LLC

(hereinafter referred to as the "Applicant"), the corporation/partnership/limited liability company named in this Application; that he/she has read the foregoing Application and knows the content thereof, that the same is true to his/her knowledge.

Deponent further says that the reason this verification is made by the deponent and not by the Applicant is because the said Applicant is a legal entity - corporation/partnership/limited liability company - as opposed to an actual person. The grounds of the deponent's belief relative to all matters in said Application which are not upon his/her own personal knowledge are investigations which deponent has caused to be made concerning the subject matter of the Application as well as acquired by the deponent in the course of his/her duties, as an officer and from the books and papers of the Applicant.

On behalf of said Applicant, deponent acknowledges and agrees that the Applicant shall be and is responsible for all costs incurred by the County of Clinton Industrial Development Agency (hereinafter referred to as the "Agency") acting on behalf of the attached application whether or not the application, the project it describes, the attendant negotiations and financial assistance is carried to successful conclusion. If, for any reason whatsoever, the Applicant fails to conclude or consummate necessary negotiations or fails to act within a reasonable or specified period of time to take reasonable, proper, or requested action or withdraws, abandons, cancels, or neglects that application (or if in cases of bonds the Agency or the Applicant are unable to find buyers willing to purchase the total bond issue requested), then, and in that event, upon presentation of invoice, the Applicant shall pay to the Agency, its agents or assigns all actual costs involved in conduct of the application, up to that date and time, including fees of Agency counsel. A non-refundable filing fee of \$1,500 is required with this application, of which, \$750 will be applied to the project closing costs (Make check payable to: County of Clinton IDA). Upon successful closing of the transaction and/or sale of the required bond issue, the Applicant shall pay to the Agency an administrative fee set by the Agency not to exceed an amount equal to .75% of the total benefited transaction. The cost incurred by the Agency and paid by the Applicant, including the Agency's counsel and the administrative fee, may be considered as a cost of the project and included as part of the resultant transaction. The Applicant should also be aware that the Applicant is responsible for all fees and legal costs incurred by the Agency for re-conveyance of titles at the end of the project. The Agency reserves the right to visit the project site on an annual basis during the benefit period.

Agency Financial Assistance Required for Project. The Project would not be undertaken but for the Financial Assistance provided by the Agency or, if the Project could be undertaken without the Financial Assistance provided by the Agency, then the Project should be undertaken by the Agency for the following reasons:

If the project is assessed at fair market value, the project is uneconomical or will not be built. We want a standard PILOT payment adopted that is economical for project while compensating the taxing jurisdictions. The sales tax abatement and mortgage tax exemption would further incentivize development of this project and additional projects in the county.

Relocation or Abandonment. The provisions of subdivision one of Section 862 of the General Municipal Law will not be violated if Financial Assistance is provided for the Project.

Compliance with Article 18-A of the New York General Municipal Law. The applicant confirms and hereby acknowledges that as of the date of this application, the applicant is in substantial compliance with all provisions of

Article 18-A of the New York General Municipal Law, including, but not not limited to, the provision of Section 859-a and Section 862(1) thereof.

Compliance with Federal, State, and Local Laws. The applicant is in substantial compliance with applicable local, state, and federal tax, worker protection, and environmental laws, rules, and regulations.

False or Misleading Information. The applicant understands that the submission of any knowingly false or knowingly misleading information may lead to the immediate termination of any Financial Assistance and the reimbursement of an amount equal to all or part of any tax exemptions claimed by reason of Agency involvement in the Project.

Absence of Conflicts of Interest. The applicant acknowledges that the members, officers and employees of the Agency are listed on the Agency's website. No member, officer or employee of the Agency has an interest, whether direct or indirect, in any transaction contemplated by this Application, except as hereinafter described:

Additional Information. Additional information regarding the requirements noted in this Application and other requirements of the Agency is included the Agency's Policy Manual which can be accessed at <http://www.clintoncountynyida.com/>.

I affirm under penalty of perjury that all statements made on this application are true, accurate and complete to the best of my knowledge.


(CEO/President of Company)
SVP

NOTARY

Sworn to before me this 4 day of AUGUST, 2020

 (seal)

JULIANA C. MARQUES
Notary Public, State of New York
No. 01MA6338149
Qualified in New York County
Commission Expires March 7, 2024

Note to Applicant:

The 2013 New York State Budget, enacted on March 28, 2013, established new recordkeeping, reporting, and recapture requirements for industrial development agency projects that receive New York State ("NYS") sales tax exemptions, including projects granted assistance by County of Clinton Industrial Development Agency ("CCIDA").

These new NYS sales tax recording and reporting requirements for industrial development agency projects include the following requirements:

1. CCIDA must keep records of the amount of sales tax benefits provided to each project and make those records available to NYS upon request.
2. CCIDA must report to NYS, within 30 days after providing financial assistance to a particular project, the amount of sales tax benefits expected to be provided to such project.
3. CCIDA must post on the internet and make available without charge copies of its resolutions and project agreements.

The legislation now requires that CCIDA to recapture NYS sales tax benefits where:

1. The project is not entitled to receive those benefits;
2. The exemptions exceed the amount authorized by CCIDA, or are claimed for unauthorized property or services; or
3. The project operator failed to use property or services in the manner required by its agreements with CCIDA.

What this means for CCIDA Projects:

1. Companies requesting a sales tax exemption from CCIDA must include in their application the value of the savings they anticipate receiving. Note that the new regulations require that CCIDA must recapture any benefit that exceeds the amount listed in a company's application. Accordingly, please ensure that you provide a realistic estimate of the sales tax exemptions which you are requesting.
2. Projects subject to recapture must remit payment within 20 days of a request from CCIDA.
3. All project agreements and resolutions will now be publicly available on CCIDA's website.
4. CCIDA's policy has always been to allow project operators to request certain information be redacted if the project can demonstrate that its release would result in substantial harm to the project's competitive position.

**Note: Per the CCIDA UTEP, all Project receiving sales tax benefits are required to submit their ST-340s or risk losing said benefit.*

PART II: COST BENEFIT ANALYSIS

Please answer all questions either by filling in blanks or by attachment

SECTION F - FINANCING STRUCTURE:

1. Tax-Exempt Financing Requested [Check all that Apply]

- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Straight Lease Transaction |
| <input type="checkbox"/> | Tax-Exempt Bonds |
| <input checked="" type="checkbox"/> | Sales Tax Exemption Until completion date |
| <input checked="" type="checkbox"/> | Mortgage Tax Abatement |
| <input checked="" type="checkbox"/> | Real Property Tax Abatement/PILOT |
| <input type="checkbox"/> | Other – Explain: |

2. Based on the CCIDA's UTEP PILOT Scoring Criteria (see attachment C); indicate the methodology used by the applicant to determine the Type of real property tax abatement the project is eligible for (if applicable):

Type I ☒ Type II ☐ Type III ☐ Deviation ☒ (check one)

Describe:

Applicant is seeking a standardized PILOT payment based on the generating capacity of the system expressed in a dollar per MWAC calculations

SECTION G - PROJECT QUESTIONNAIRE:

1. Name of Project Beneficiary ("Company"):	NY Mooers VI, LLC
2. Municipality Project is Located	Mooers Forks
3. School District Project is Located	Northeastern Clinton
4. Estimated Amount of Project Benefits Sought:	\$300,000 (year 1) Ongoing benefits are a property tax exemption replaced with a standard PILOT
A. Amount of Bonds Sought:	\$ <u> N/A </u>
B. Value of Sales Tax Exemption Sought	\$ <u>235,000</u> (4% of Equipment Cost)
C. Value of Real Property Tax Exemption Sought	\$ <u>140,000/yr to be replaced with PILOT</u>
D. Value of Mortgage Recording Tax Exemption Sought (Clinton County MRT = 1%; as of 9/1/13)	\$ <u>38,000</u> (1% Private Sector Financing)

SECTION H - PROJECTED PROJECT INVESTMENT:

A. Land-Related Costs	
1. Land acquisition	\$ N/A
2. Site preparation	\$ 100,000
3. Landscaping	\$ 50,000
4. Utilities and infrastructure development (costs to upgrade the utility electrical grid to accept additional electricity from the solar farm)	\$ 196,242
5. Access roads and parking development	\$ 100,000
6. Other land-related costs (describe)	\$ N/A

B. Building-Related Costs	
1. Acquisition of existing structures	\$ N/A
2. Renovation of existing structures	\$ N/A
3. New construction costs	\$ N/A
4. Electrical systems	\$ N/A
5. Heating, ventilation and air conditioning	\$ N/A
6. Plumbing	\$ N/A
7. Other building-related costs (describe)	\$ N/A

C. Machinery and Equipment Costs	
1. Production and process equipment	\$ N/A
2. Packaging equipment	\$ N/A
3. Warehousing equipment	\$ N/A
4. Installation costs for various equipment	\$ 1,790,720
5. Other equipment-related costs (describe) Solar panel and related equipment	\$ 5,688,960

D. Furniture and Fixture Costs	
1. Office furniture	\$ N/A
2. Office equipment	\$ N/A
3. Computers	\$ N/A
4. Other furniture-related costs (describe)	\$ N/A

E. Working Capital Costs	
1. Operation costs	\$ N/A
2. Production costs	\$ N/A
3. Raw materials	\$ N/A
4. Debt service	\$ N/A
5. Relocation costs	\$ N/A
6. Skills training	\$ N/A
7. Other working capital-related costs (describe)	\$ N/A

F. Professional Service Costs	
1. Architecture and engineering	\$ 150,000
2. Accounting/legal	\$ 75,000
3. Other service-related costs (describe)	\$ 942,036

G. Other Costs	
1. Mortgage Amount not included in above costs	\$ N/A
2. Customer Acquisition Costs	\$420,250
3. Project Reserve Costs (decommissioning)	\$100,000

H. Summary of Expenditures	
1. Total Land Related Costs	\$ 446,242
2. Total Building Related Costs	\$ 0
3. Total Machinery and Equipment Costs	\$ 7,479,680
4. Total Furniture and Fixture Costs	\$ 0
5. Total Working Capital Costs	\$ 0
6. Total Professional Service Costs	\$ 1,167,036
7. Total Other Costs	\$ 520,250
TOTAL PROJECT COSTS	\$ 9,613,207

SECTION I - PROJECTED CONSTRUCTION EMPLOYMENT IMPACT:

1. Please provide estimates of total construction jobs at the Project:

Year	Construction Jobs (Annual wages and benefits \$40,000 and under)	Construction Jobs (Annual wages and benefits over \$40,000)
Current Year	--	39-50 (*)
Year 1	--	--
Year 2	--	--
Year 3	--	--
Year 4	--	--
Year 5	--	--

* 11-12 Electrical
 7-10 Civil
 18-24 Racking/Installation
 3-4 Fencing

2. Please provide estimates of total annual wages and benefits of total construction jobs at the Project:

Year	Total Annual Wages And Benefits	Estimated Additional NYS Income Tax
Current Year	\$ 7,500,000 (annualized)	\$ 300,000 (annualized)
Year 1	\$ _____	\$ _____
Year 2	\$ _____	\$ _____
Year 3	\$ _____	\$ _____
Year 4	\$ _____	\$ _____
Year 5	\$ _____	\$ _____

SECTION J - PROJECTED PERMANENT EMPLOYMENT IMPACT:

1. Please provide estimates of total existing permanent jobs (FTE) to be preserved or retained as a result of the Project: **FTE: Any combination of (2) two or more part-time jobs that when combined together, constitute the equivalent of a job of at least 35 hours per week.**

Year	Existing Jobs (Annual wages and benefits \$40,000 and under)	Existing Jobs (Annual wages and benefits over \$40,000)
Current Year	--	--
Year 1	--	--
Year 2	--	--
Year 3	--	--
Year 4	--	--
Year 5	--	--

2. Please provide estimates of total new permanent jobs (FTE) to be created at the Project:

Year	New Jobs (Annual wages and benefits \$40,000 and under)	New Jobs (Annual wages and benefits over \$40,000)
Current Year	--	--
Year 1	--	--
Year 2	--	--
Year 3	--	--
Year 4	--	--
Year 5	--	--

3. Please provide estimates of total annual wages and benefits of total permanent construction jobs at the Project:

Year	Total Annual Wages and Benefits	Estimated Additional NYS Income Tax
Current Year	\$ _____	\$ _____
Year 1	\$ _____	\$ _____
Year 2	\$ _____	\$ _____
Year 3	\$ _____	\$ _____
Year 4	\$ _____	\$ _____
Year 5	\$ _____	\$ _____

4. Provide estimates for the Creation of New Job Skills relating to permanent jobs. List the projected new job skills for the new permanent jobs to be created as a result of the undertaking of the project by the applicant

New Job Skills	Number of Positions Created	Wage Rate

**Should you need additional space, please attach a separate sheet.*

SECTION K - PROJECTED OPERATING IMPACT:

1. Please provide estimates for the impact of Project operating purchases and sales:

Additional Purchases (1st year following project completion)

\$ _____

Additional Sales Tax Paid on Additional Purchases

\$ _____

Estimated Additional Sales (1st full year following project completion)

\$ _____

Estimated Additional Sales Tax to be collected on additional sales (1st full year following project completion)

\$ _____

2. Please provide estimates for impacts of other economic benefits expected to be produced as a result of the Project not mentioned in this application:

CBA QUESTIONNAIRE CERTIFICATION

I certify that I have prepared the responses provided in this Questionnaire.

I affirm under penalty of perjury that all statements made in this Questionnaire are true, accurate and complete to the best of my knowledge.

I understand that the foregoing information and attached documentation will be relied upon, and constitute inducement for, the Agency in providing financial assistance to the Project. I certify that I am familiar with the Project and am authorized by the Company to provide the foregoing information, and such information is true and complete to the best of my knowledge. I further agree that I will advise the Agency of any changes in such information, and will answer any further questions regarding the Project prior to the closing.

Date Signed: AUGUST 4, 2020.

Name of Person Completing Project Questionnaire on behalf of the Company.

Name: PETER DOLGOS

Title: SVP

Phone Number: 646-888-6425

Signature: Peter Dolgos

APPLICATION ATTACHMENT A:

Acknowledgements and Yearly Filings

As a condition to issuing financial assistance to the applicant the County of Clinton Industrial Development Agency is required by the New York State Comptroller's office to obtain the following supplementary information yearly for the duration of the transaction:

1. Outstanding balance at beginning and end of year and principal payments made during year.
2. The current interest rate for bonds (for adjustable rate bonds the rate at the end of the year is needed).
3. Current year tax exemptions for county, local (towns) and school taxes.
4. PILOT (*Payment in lieu of taxes*) payments made each year to county, local and school taxing authorities.
5. Documentation and affidavits regarding the use of local construction workers in the construction phase of the Project. See Use of Local Labor Policy and Attachment D of this application.
6. Once project is authorized, report the number of full-time, part-time and seasonal workers employed in terms of FTE (as defined in this application).
7. Submit NY-45 Form (with employee identification blacked-out) showing 4Q monthly data regarding salary and employment levels. Also include an average salary.

In addition to the above, in reporting the first year the CCIDA need:

1. An amortization schedule showing the planned principal reduction each year for the life of the issue.
2. The amount exempted for:
 - (a) sales tax
 - (b) mortgage recording tax
3. Each year of construction – Sale tax and documents (ST-60, ST-340, ST-123, etc.).

This information is required by January 31st of each succeeding year and shall be submitted in writing to the County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, NY 12901. (Fax: 518-562-2232)

We have reviewed, understand and will comply with the above, as required by the New York State Comptroller's Office.

Name: Peter Dolgor Title: SVP

Date: 8/4/2020

APPLICATION ATTACHMENT B

County of Clinton IDA Fee Schedule:

Adopted: 5/13/13

Revised 3/21/16

Revised 2/13/17

Type	Cost	Description
<i>Application Fee</i>	\$1500	The Agency will charge a nonrefundable administrative application fee for finance transactions equal to \$1500 upon submission of an application by a project. \$750 is a non-refundable administrative fee. The remaining \$750 will be applied to the project's closing costs.
<i>Fee Issuances for Bonds, Refinancing or Straight Lease Transactions</i>	.75 of 1%	The Agency will charge said fee on the total benefited project costs. Such fee shall be payable upon the successful conclusion of the sale of obligations (bonds) or upon the execution and delivery of the documents providing financial assistance (straight lease not involving bonds). Fees shall be applied towards administrative costs to the Agency and are non-refundable.
<i>Modification/Amendment Transactions Fees</i>	\$500	The Agency will charge a nonrefundable modification/amendment transaction fee per instance (post-closing) equal to \$500 upon the submission of a letter to the Agency explaining in detail the requested action to modify or amend existing documents previously executed by the Agency. Fees shall be applied towards administrative costs to the Agency and are non-refundable.
<i>Reconveyance of a Straight Lease Fees Not Involving New Financial Assistance</i>	\$500	The Agency will charge a nonrefundable reconveyance administrative fee for straight lease transactions. The project is responsible for paying all legal costs and/or other third party costs incurred by the Agency on behalf of the project. Fees shall be applied towards administrative costs to the Agency and are non-refundable.
<i>Special Meeting Fee</i>	\$500	The Agency will charge a nonrefundable administrative fee for a special meeting of the IDA held at the project's request.
<i>IDA Legal Fees</i>	Varies	The project is responsible for paying all legal costs and/or other third party costs incurred by the Agency on behalf of the project. Fees shall be applied towards administrative costs to the Agency and are non-refundable.

*The Agency Board reserves the right to determine and impose other administrative fees on Agency projects in consideration for financial assistance being granted by the Agency and/or the costs incurred by the Agency. The Agency may provide for a different application fee and/or a different administrative fee for a particular project by resolution duly adopted by the Agency Board.

APPLICATION ATTACHMENT C

CCIDA UTEP PILOT Scoring Criteria

Variable/ Threshold	Permanent Payroll Level in Terms of # of Jobs Created	% of Average County Wage	# of Potential Spin-off Jobs	Local Business Impact and/or Community Investment Reviewing appropriate level yearly	Educational Benefits Reviewing appropriate levels/year	Value of Real Property	Totals:
Level 1 (1 point)	Less than 100 jobs within 5 years	At least 75% for <u>new</u> jobs	Less than 100 verifiable Spin off jobs	Need for local industry/services is low e.g. insurance, banking, trucking Belong to Chamber	Low level such as school visits/ school-to-work	\$500k-\$1.5x10 ⁶	
Level 2 (2 pts)	100 - 300 jobs	At least 100% for <u>new</u> jobs	100-300 verifiable Spin off jobs	Use local industrial suppliers & services/raw materials/parts Or Reuse abandoned facility	Limited Support/ Learn to Earn Internships underwrite facilities or programs	\$1.5 - 5.0 x 10 ⁶	
Level 3 (3 pts)	300+ jobs within 5 years	At least 150% for <u>new</u> jobs	300+ verifiable Spin off jobs	Demonstrate synergy with local services, suppliers and manufacturers Or Reclaim brownfield/adaptive re-use of facilities.	Major support to schools and colleges Scholarships (NMSQT); internships; sponsorships underwrite faculty \$10,000	\$5.0 x 10 ⁶ +	
Totals:							

Scoring

6 points or less - Category 1 benefits
 7-11 points - Category 2 benefits
 12 points or more - Category 3 benefits

APPLICATION ATTACHMENT D
CONSTRUCTION EMPLOYMENT AGREEMENT

Recognizing the mission of County of Clinton Industrial Development Agency (the "Agency") to promote construction employment opportunities for residents of Clinton County, New York and in consideration of the extension of financial assistance by the Agency for the project which is the subject of this application (the "Project"), NY Mooers VI, LLC (the "Company") understands that it is the Agency's policy that benefiting private entities should employ New York State residents and agrees to provide the information requested below as a way to provide local construction opportunities. The Company also agrees to provide an estimate of the number, type and duration of construction jobs to be created through Agency assistance, whether employment is gained directly through the Company, its general contractor, or individual vendors.

Upon completion of the Project, the Company shall, if requested by the Agency, submit to the Agency a Construction Completion Report in which is identified names and business addresses of the prime contractor, sub-contractors and vendors engaged in the construction of the Project.

Relevant Company Information:

Company: NY Mooers VI, LLC
Company representative for Contract Bids and Awards: Peter Dolgos
Mailing Address: 140 East 45th Street, Suite 32B-1
New York, NY 10017

General Contractor, if determined:

Contractor: _____
Representative: _____
Mailing Address: _____

Phon: _____ Fax: _____
Email: _____

Phone: _____ Fax: _____
Email: _____

Construction start date is estimated to be March 2021 with occupancy to be taken on July 2020 (earliest) (estimated)?

Construction Phase or Process	Duration of Construction Phase	# to be employed
	3-5 months	

Construction Phase or Process	Duration of Construction Phase	# to be employed

8/4/2020
Dated _____

NY Mooers VI, LLC
Name of Applicant _____
Peter Dolgos
Signed _____
Peter Dolgos / Senior Vice President
Printed Name and Position _____

EXHIBIT A
TO
THE COUNTY OF CLINTON INDUSTRIAL DEVELOPMENT AGENCY
APPLICATION FOR FINANCIAL ASSISTANCE

LEASE AGREEMENT

This Lease Agreement ("**Agreement**"), dated as of April 12, 2019 ("**Effective Date**"), is between Shanna L. Ashline and Neil A. Ashline (each a "**Fee Lessor**" and collectively, the "**Fee Lessors**"), Larry L. Ashline and Marlene L. Ashline (each a "**Life Tenant Lessor**" and collectively, the "**Life Tenant Lessors**," and together with the Fee Lessors, the "**Lessor**"), and NY Mooers VI, LLC, a limited liability company formed in New York ("**Lessee**"). The Lessee and Lessor are each, a "**Party**" and, collectively, the "**Parties**".

RECITALS

- A. The Fee Lessors are the owners of certain real property as further described in Exhibit A attached hereto ("**Property**"). The Life Estate Lessors are the holders of a life estate in the Property.
- B. The Lessor intends to lease certain portions of the Property ("**Premises**"), as further described in Exhibit A attached hereto, to Lessee.
- C. Lessee intends to engineer, construct, install and operate a solar electric generating facility ("**System**") within the Premises.
- D. In connection with the foregoing, Lessee desires to lease the Premises located on the Property from Lessor in order to install and operate the System and Lessor is willing to grant such lease to Lessee.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

1. Definitions. The following terms shall have the meanings set forth below:

- (a) "**Affiliate**" means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.
- (b) "**Applicable Law**" means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.
- (c) "**Bankrupt**" means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within thirty (30) days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar

official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

- (d) **"Business Day"** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.
- (e) **"Commercial Operation"** means that the System is ready for regular, daily operation, has been connected to the electrical grid of the local utility, and is capable of producing Energy Output.
- (f) **"Commercial Operation Date"** means the date the System has achieved Commercial Operation.
- (g) **"Construction Period"** means the period commencing upon the date of arrival at the Premises or Property of any materials to be used in the construction of the System and ending on the earlier of the (i) date on which this Agreement is terminated or (ii) commencement of the Operation Period.
- (h) **"Delivery Point"** means the agreed location or locations where Energy is to be delivered and received by the local utility.
- (i) **"Development Period"** means the period commencing on the Effective Date and ending on the earlier of the (i) date on which this Agreement is terminated, or (ii) commencement of the Construction Period.
- (j) **"Energy"** means electric energy (three-phase, 60-cycle alternating current ("AC"), expressed in kilowatt-hours).
- (k) **"Energy Output"** means the amount of electrical energy generated by the System and delivered to the Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device.
- (l) **"Environmental Attributes"** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to renewable energy credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (Sox), nitrogen oxides (Nox), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or

bill, and international or foreign emissions trading program. Green Tags are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include: (i) any energy, capacity, reliability or other power attributes from the System; (ii) production or investment tax credits associated with the construction or operation of the System, Treasury grants made pursuant to Section 1603 of the American Recovery and Reinvestment Act and other financial incentives in the form of credits, reductions, or allowances associated with the System that are applicable to a state or federal income taxation obligation; or (iii) emission reduction credits encumbered or used by the System for compliance with local, state, or federal operating and/or air quality permits.

- (m) **"Hazardous Materials"** shall have the meaning ascribed to such term in Section 6(d).
- (n) **"Metering Device"** means any and all meters at or before the Delivery Point needed for the registration, recording, and transmission of information regarding the Energy generated by the System and delivered to the Delivery Point.
- (o) **"Operation Period"** means the period commencing on the Commercial Operation Date and continuing throughout the Term.
- (p) **"Person"** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, limited liability partnership, or any other entity of whatever nature.
- (q) **"Renewable Energy Incentives"** shall mean: (a) federal, state, or local tax credits or other tax benefits (such as accelerated depreciation) associated with the construction, ownership, or production of electricity from the System or any governmental payments made in lieu of such tax benefit, (b) any federal, state or local grants, rebates, subsidized financing or any other subsidy relating to the renewable energy property of the System or the output thereof, and (c) any other form of incentive that is not an Environmental Attribute that is available with respect to the Solar Facility.
- (r) **"System"** means the solar electric generating facility that produces the Energy Output.

2. **Leased Premises and Related Rights.** Fee Lessors own the Property. Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, the Premises .

3. **Rent.**

- (a) On the Effective Date, Lessee shall pay Lessor a non-refundable payment of [REDACTED] dollars. Beginning on the day that is ninety (90) days after the Effective Date, and at the end of each consecutive ninety (90) day period thereafter occurring during the the Development Period and Construction Period, Lessee shall pay Lessor a non-refundable payment of [REDACTED] dollars.
- (b) During the Operation Period, Lessee shall pay Lessor annual rent payments in the amount of [REDACTED] dollars per acre, or portion thereof.
- (c) Rent payments during the Operation Period shall be payable monthly on or before the first day of the month.

4. **System Construction, Installation and Operation.**

- (a) Lessor hereby consents to the construction of the System by Lessee on the Premises, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections, provided all work shall be conducted in accordance with all Applicable Laws (**Installation Work**). Subject to Lessor's cooperation in accordance with Section 8, Lessee, at its sole expense, shall obtain any and all permits, variances and licenses which may be required by Applicable Law for Lessee's use and occupancy of the Premises in accordance with the provisions of this Agreement, and shall comply with such permits, variances and licenses. Without limitation to Lessee's right to terminate this Agreement pursuant to Section 9(a)(ii) below, the failure of Lessee to obtain any such certificate, permit or license shall not be a condition precedent to Lessee's obligation to pay Rent or to perform any of its other obligations hereunder or otherwise affect the validity of this Agreement.
- (b) Lessee shall also have the right from time to time during the Term hereof to:
 - (i) install, maintain and operate the System on the Premises;
 - (ii) maintain, clean, repair, replace and dispose of part or all of the System;
 - (iii) add or remove the System or any part thereof; and
 - (iv) access the Premises with guests for promotional purposes during normal business hours and at other times as are acceptable to the Lessor in its reasonable business judgment.
- (c) Lessor acknowledges that the installation of all or a portion of the System will require physically mounting and adhering the System to the Premises and consents to such mounting or adhering, as applicable.
- (d) Lessor and its authorized representatives shall at all times have access to and the right to observe the Installation Work, subject to compliance with Lessee's safety rules, but shall not ~~interfere with the Installation Work or handle any Lessee equipment or the System without~~ prior written authorization from Lessee.
- (e) Lessee agrees that fencing installed by Lessee along the perimeter of the System will be "deer fencing," or such other fencing as may be reasonably acceptable to Lessor.

5. System and Output Ownership.

- (a) Lessor acknowledges and agrees that Lessee or one of its Affiliates is the exclusive owner and operator of the System, that all equipment comprising the System shall remain the personal property of Lessee and shall not become fixtures, notwithstanding the manner in which the System is or may be attached to any real property of Lessor, and that Lessor shall have no right, title or interest in the System or any component thereof, notwithstanding that the System may be physically mounted or adhered to the Premises.
- (b) Lessor acknowledges that Lessee is the exclusive owner of the Energy generated by the System and the exclusive owner of all Environmental Attributes and Renewable Energy Incentives attributable to the System. Lessor shall not make any claim to ownership of the Energy, Environmental Attributes or Renewable Energy Incentives whatsoever. Without the express written consent of Lessee, Lessor shall not make or publish any public statement or notice regarding any Energy Output, Environmental Attribute or Renewable Energy Incentive of the System. The System shall not be considered an electric public utility, an investor owned utility, or a municipal utility.

6. Representations and Warranties of Lessor.

Lessor hereby represents and warrants to Lessee that:

- (a) Authorization; Enforceability. The execution and delivery by Lessor of, and the performance of its obligations under, this Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other Person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Lessor or any valid order of any court, or regulatory agency or other body having authority to which Lessor is subject. This Agreement constitutes a legal and valid obligation of Lessor, enforceable against Lessor in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency or other laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.
- (b) Lessor's Title to Premises. Each Fee Lessor has good title to the Premises and Property, and each Life Tenant Lessor holds a good and valid life estate in the Property, in each case free and clear of any liens, and Lessee shall have quiet and peaceful possession of the Premises free from any claim of any Person claiming by, through or under Lessor, or possessing or claiming superior title to the Premises, without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the Term of this Agreement. Lessor agrees to warrant and defend Lessee's right to quiet enjoyment of the Premises and leasehold title to the Premises against the claims of any Persons claiming by, through or under Lessor. To Lessor's knowledge, there are no pending or threatened legal actions, condemnation proceedings, unpaid assessments, violations of law, or other proceedings or actions likely to materially interfere with the exercise by Lessee of its rights under this Agreement.
- (c) Hazardous Materials. To the best of Lessor's knowledge, there are no substances, chemicals or wastes, identified as hazardous, toxic or dangerous materials in any Applicable Law ("Hazardous Materials") present on, in or under the Premises in violation of any Applicable Law. Lessor shall not introduce or use any Hazardous Materials on, in or under the Premises in violation of any Applicable Law. If Lessor becomes aware of any such Hazardous Materials on, in or under the Premises in violation of any Applicable Law, Lessor shall promptly notify Lessee of the type and location of such materials in writing. Lessor agrees to assume full responsibility for (and protect, indemnify and defend Lessee against) any liability or cleanup obligations for any contamination or pollution from Hazardous Materials or breach of environmental laws related to the Premises during the Term of this Agreement and while the Lessor owns the Premises, if such contamination, pollution or breach of environmental laws arise from or are attributable to Lessor, its agents, employees or invitees or Lessor, its agents, employees or invitees contributed to the presence of such Hazardous Materials. This Section 6(d) shall survive the termination or expiration of the Agreement.

7. Representations and Warranties of Lessee.

Lessee hereby represents and warrants to Lessor that:

- (a) Organization. Lessee is a duly organized limited liability company validly existing and in good standing under the laws of the State of New York.
- (b) Authorization; Enforceability. The execution and delivery by Lessee of, and the performance of its obligations under, this Agreement have been duly authorized by all necessary action, do

not and will not require any further consent or approval of any other Person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Lessee or any valid order of any court, or regulatory agency or other body having authority to which Lessee is subject. This Agreement constitutes a legal and valid obligation of Lessee, enforceable against Lessee in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency or other laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

- (c) Hazardous Materials. Lessee shall not introduce or use any Hazardous Materials on, in or under the Premises in violation of any Applicable Law. If Lessee becomes aware of any such Hazardous Materials on, in or under the Premises in violation of any Applicable Law, Lessee shall promptly notify Lessor of the type and location of such materials in writing. Lessee agrees to assume full responsibility for (and protect, indemnify and defend Lessor against) any liability, including, without limitation, diminution in value of the Premises, damages for loss or restriction on use of the Premises, sums paid in settlement of claims, attorneys' fees, consultant fees and expert fees, or cleanup, investigation or remediation obligations for any contamination or pollution or breach of environmental laws related to any Hazardous Materials on, in or under the Premises that arise from or are attributable to Lessee, its agents, employees or invitees, including to the extent Lessee, its agents, employees or invitees contributed to the presence of such Hazardous Materials. This Section 7(c) shall survive the termination or expiration of the Agreement.

8. Covenants.

- (a) Transfer of Premises. Lessor shall not sell or transfer the Premises unless Lessor shall have given Lessee at least thirty (30) days' prior written notice thereof, which notice shall identify the transferee, its contact information, the Premises to be so transferred, and the proposed date of transfer. Lessor agrees that this Agreement and the leasehold interests, easements, and other interests provided herein shall run with the Premises and survive any transfer of any of the Premises. In furtherance of the foregoing, Lessor agrees that, prior to and as a condition of any sale, assignment, or other transfer of the Premises, it shall cause any purchaser, assignee, or other transferee to execute and deliver to and for the benefit of Lessee a document in form and substance reasonably acceptable to Lessee pursuant to which such party acknowledges and consents to the Lessee's rights in the Premises as set forth herein including, without limitation, (i) an acknowledgement by the transferee that it has no interest in the System and shall not gain any interest in the System by virtue of the Lessor's transfer, and (ii) an agreement by the transferee to be bound by all of the obligations, covenants and conditions applicable to Lessor under this Agreement.
- (b) No Interference With and Protection of System. Lessor will not conduct activities on, in or about the Premises that, to Lessor's knowledge, have a reasonable likelihood of causing damage, impairment or will otherwise adversely affect the System. Lessor covenants that it will obtain a non-disturbance agreement ("NDA") from any third party who now has or may in the future obtain an interest in the Premises or any portion of the Property to which Lessee has rights under this Agreement, including, without limitation any lenders to Lessor, which NDA shall, without limitation (i) acknowledge and consent to the Lessee's continuing rights to the Premises, the Property (to the extent applicable) and the System, all in accordance with this Agreement, upon any foreclosure or exercise of rights by such third party under any agreement

between such third party and Lessor, and (ii) acknowledge that such third party has no interest in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this Agreement or the foreclosure or exercise of rights by such third party under any agreement between such third party and Lessor.

- (c) Insolation. Lessor acknowledges and agrees that access to sunlight is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Agreement.

(i) Accordingly, Lessor, as fee simple owner of or holder of a life estate in the Premises and Property, covenants and agrees that it shall not, on the Premises, the Property, or any adjacent property owned or controlled by Lessor, construct or permit to be constructed any structure or permit the growth of foliage, or emit or permit the emission of suspended particulate matter, smoke or other airborne impediments to insolation (other than those airborne substances generated by normal farming activities consistent with existing use of the Property as of the Effective Date), in each case if doing so would block, shade or obstruct to any degree the solar radiation available for collection by the System on any day of the year at any time from sunup to sundown, from what was available for collection by the System from time to time prior to the shading or obstruction introduced by Lessor. Lessor will remove or cause to be removed any structure, foliage or other obstruction appearing on the Property, the Premises (but only to the extent constructed or permitted to be constructed by Lessor and exclusive of natural foliage growth), or any adjacent Property owned by Lessor in violation of this section (i) within thirty (30) days after written request by Lessee, failing which Lessee shall be entitled to remove such structure, foliage or obstruction. In the event Lessee removes such structure, foliage or obstruction, such removal will be at Lessee's cost unless such structure, foliage or obstruction was installed or created by Lessor on or after the Effective Date, in which case Lessee will be entitled to deduct the reasonable cost thereof from the Rent.

(ii) If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties not owned by Lessor which might have the effect of diminishing the solar irradiance available to the System, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee as Lessee seeks to have the owner(s) of those other properties take steps to mitigate the impact of such activities on the System and to preserve existing levels of insolation of the System. Such cooperation shall include, without limitation, seeking enforcement of any set back or other applicable zoning requirements. Lessor shall not be required to incur costs in connection with the performance of its obligations under this section (ii) unless Lessee has agreed to reimburse Lessor for such costs.

(iii) Lessee shall be entitled to record its rights under this Section 8(c) against the Property or any adjacent property owned by Lessor.

- (d) Lessor's Cooperation; Access to Premises. During the Term, Lessor shall: (i) reasonably cooperate in all respects with Lessee in its efforts to obtain all of the certificates, permits, licenses, easements and other approvals necessary for the construction, installation and operation of the System ("**Approvals**"), all at no cost and with no obligation to incur liability as a result; (ii) take no action on the Premises that, to Lessor's knowledge, would affect the

Premises in a manner that would be adverse to the permitted use thereof by Lessee under the terms of this Agreement; (iii) promptly after receipt of a written request by Lessee, execute any necessary documents relating to requests for grants for non-exclusive right-of-way and easements (under terms acceptable to Lessor) over the Property, for electric and other public utilities and facilities and any other electric power purpose including any power transmission lines, as deemed necessary by Lessee for development and use of the System, provided that any such right-of-way or easement does not adversely affect the Property as determined by Lessor, and provided that Lessor shall have the right to determine the exact location of any such right-of-way or easement; and (iv) provide Lessee with access to the Premises as reasonably necessary to allow Lessee to develop, design, engineer, install, construct and operate the System, including ingress and egress rights to the Premises for Lessee and its employees, contractors and sub-contractors, and will use commercially reasonable efforts to provide sufficient space for temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities as reasonably necessary during the installation and commissioning of the System. Lessor agrees to reasonably cooperate with Lessee in making application for the Approvals, including joining and executing any Approval required by a government agency, at no expense and no obligation to incur liability as a result. Without limitation to the foregoing, Lessor agrees not to contest or oppose any Approval sought by Lessee in connection with the development, construction and operation of the System.

9. Term and Termination.

- (a) The term of this Agreement (“Term”) shall commence on the Effective Date and terminate on the thirty (30) year anniversary of the Commercial Operation Date, with an option to extend the term by mutual agreement in five (5) year increments, provided that:
 - (i) ~~Lessor may terminate this Agreement without liability effective upon provision of written~~ notice if the Construction Period has not commenced by the second anniversary of the Effective Date, unless such delay is a result of the breach by Lessor of this Agreement. If not exercised by Lessor prior to such date, Lessor’s right under this section (i) will lapse on the date the Construction Period begins. Upon termination pursuant to this paragraph Lessee’s obligation under 9(b) below will become effective if applicable.
 - (ii) Lessee may terminate this Agreement upon thirty (30) days’ written notice to Lessor, which termination will be without liability except with respect to (a) any payment obligations accrued with respect to the period occurring prior to termination, and (b) Lessee’s tax obligation set forth in (c) below.
- (b) Within ninety (90) days after this Agreement is terminated in accordance with section (a) above, or within ninety (90) days after the expiration of the Term, Lessee shall, at its sole cost and expense, remove the System or any existing portion of the System or any materials associated with the System, repair any damage caused by such removal, and restore the Premises to its condition as of the Effective Date. In connection with such removal, repair and restoration, Lessor shall continue to provide Lessee (and its employees, contractors and subcontractors) with access to the Premises; provided that Lessee shall continue to pay Rent until such removal and restoration has been completed.
- (c) Within ninety (90) days after this Agreement is terminated in accordance with section (a) above, or within ninety (90) days after the expiration of the Term, Lessee shall pay the pro-rated

amount of its obligations for payment of taxes pursuant to this Agreement through the date of termination, to the extent not paid previously.

10. Notice of Malfunction. Each Party shall designate and advise the other Party of personnel to be notified in the event of an emergency affecting the System or Premises and shall provide notice to the other Party promptly after becoming aware thereof. Lessor's failure to notify Lessee of a malfunction or an emergency shall be without liability.

11. Confidentiality. Except to the extent required by Applicable Law, each Party shall maintain the confidentiality of the terms and conditions of this Agreement, including, without limitation, the financial terms, site design and product design, methods of operation and methods of construction and Energy Output. Notwithstanding the foregoing, each Party may disclose the terms and conditions of this Agreement to its Affiliates, counsel, auditors, accountants, agents, advisors, and other representatives as necessary in connection with the ordinary conduct of such Party's business and to governmental authorities, and Lessee may disclose the terms and conditions of this Agreement and provide any of such information to utility, consultants, and agents; any potential financing parties; and any potential purchasers of Lessee's interests. This Section 11 shall survive the termination or expiration of the Agreement.

12. Insurance.

Lessee shall obtain and maintain at all times during the Term;

- (i) Commercial General Liability Policy with a limit of One Million Dollars (\$1,000,000.00) each occurrence and a Two Million Dollar (\$2,000,000) aggregate naming Lessor as additional insured and the utility as required. Said insurance will at all times be considered as primary insurance and at no time will contribute with any liability insurance separately maintained by the Lessor with respect to the Property and Premises not subject to this Agreement;
- ~~(ii) Automobile liability insurance, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage in accordance with statutory legal requirements, with combined single limits of no less than \$1,000,000 per accident with respect to bodily injury, property damage or death. Automobile insurance may be obtained through an endorsement to the general liability policy required in (i) above;~~
- (iii) Umbrella Liability Coverage Policy, written on an occurrence basis providing a combined single limit of no less than One Million Dollars (\$1,000,000.00), subject to a One Million Dollars (\$1,000,000.00) aggregate limit applicable in its entirety to the Premises, and following form with the commercial general liability policy; and
- (iv) Workmen's Compensation Insurance in amounts required by Applicable Law or statute covering all Persons employed in connection with any work done on or about the leased Premises with respect to which claims for death or bodily injury could be asserted against leased Premises.

13. Taxes.

- (a) Lessor and Lessee each agree that, if requested by Lessee, Lessor will prepare and submit, at Lessee's expense, to the applicable planning board or other applicable government agency a request to subdivide the Property such that the Premises will comprise a distinct tax parcel within the Property.

- (b) During the Construction Period and Operating Period, Lessee shall pay directly or reimburse Lessor for all property taxes (including school district taxes) levied on and/or attributable to the Premises. In the event that, with respect to any tax year or portion thereof, the Premises are not taxed as a separate parcel but jointly with portions of the Property outside the Premises, then Lessee's obligation with respect to such taxes shall be that portion allocable to the Premises and any improvements thereon, pro-rated if applicable to reflect the amount of time during such year for which Lessee is responsible to pay property taxes under this section, as determined in a commercially reasonable manner.
- (c) Lessee shall pay when due all personal property taxes, business taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Lessee's occupancy and use of the Premises and income of Lessee generated by the System (or any portion or component thereof).
- (d) Either Party may contest the legal validity or amount of any taxes, assessments or other charges for which it is responsible under this Agreement, and may institute such proceedings as it considers necessary. The contesting party shall bear all expenses in pursuing such contest or proceeding, and shall provide prompt notice to the other party of its intent to contest such taxes, assessments or other charges. With respect to any taxes for which either party is responsible, nonpayment of which may result in a lien on the property of the other party, the responsible party shall promptly pay such taxes unless the proceeding in which it contests such tax shall operate to prevent or stay the collection of the taxes so contested or unless such party removes any such lien by bonding or otherwise, to the satisfaction of the other party. Lessor agrees to render to Lessee all reasonable assistance in contesting the validity or amount of any taxes, assessments or charges, including joining in the signing of any reasonable protests or pleadings which Lessee may reasonably deem advisable to file; provided, that Lessee shall reimburse Lessor for its reasonable attorneys' fees incurred in connection with providing such assistance.

14. Liability and Indemnity.

- (a) Lessee Indemnity. Lessee shall indemnify, defend and hold harmless Lessor, its officers, directors, agents and employees ("**Lessor Indemnitees**") from and against (i) any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Lessor, or damage or destruction of property, including, but not limited to, property of Lessee, any utility company or Lessor, and (ii) any other loss or damage incurred by Lessor, in each case to the extent arising from (a) the negligent acts or omissions or willful misconduct of Lessee, its agents, officers, directors, employees or contractors; (b) the material breach by Lessee of any of its obligations, representations or warranties under this Agreement, or (c) caused by the System or Lessee's exercise of its rights under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Lessor and any Lessor Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation-related expenses. Lessee's obligations pursuant to this Section 14(a) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessor, the Lessor Indemnitees, or their respective contractors, successors or assigns. Lessee shall pay any cost that may be incurred by Lessor or the Lessor Indemnitees in enforcing this indemnity, including reasonable attorney fees. This Section 14(a) shall survive the termination or expiration of the Agreement.

- (b) Lessor Indemnity. Lessor shall indemnify, defend and hold harmless Lessee, its officers, directors, agents and employees (“**Lessee Indemnitees**”) from and against (i) any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Lessor, and damage or destruction of property, including, but not limited to, property of either Lessee or Lessor, and (ii) any other loss or damage incurred by Lessee, in each case to the extent arising from: (a) the negligent acts or omissions or willful misconduct of Lessor, its agents, officers, directors, employees or contractors; or (b) the material breach by Lessor of any of its obligations, representations or warranties under this Agreement. The obligation to indemnify shall extend to and encompass all costs incurred by Lessee and any Lessee Indemnitee in defending such claims, demands, lawsuits or actions including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Lessor’s obligations pursuant to this Section 14(b) shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessee, the Lessee Indemnitees, or their respective contractors, successors or assigns. Lessor shall pay any cost that may be incurred by Lessee or the Lessee Indemnitees in enforcing this indemnity, including reasonable attorney fees. This Section 14(b) shall survive the termination or expiration of the Agreement.
- (c) No Consequential Damages. Notwithstanding any provision in this Lease to the contrary, neither Lessee nor Lessor shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including without limitation, loss of use, loss of profits, cost of capital or increased operating costs, arising out of this Agreement whether by reason of contract, strict liability, negligence, intentional conduct, breach of warranty or from breach of this Agreement. The foregoing provision shall not prohibit Lessee or Lessor from seeking and obtaining general contract damages for a breach of this Agreement, and shall not be construed as prohibiting recovery under the indemnification provisions of this Section 14.

15. ~~Condemnation and Force Majeure~~

- (a) In the event at any time or times during the Term of this Agreement the whole Premises shall be taken or condemned by any authority having the power of eminent domain, then and in every such case, the leasehold interest of Lessee in the Premises so taken or condemned shall at once cease and terminate and neither Party shall have any further obligation under this Agreement, except with respect to obligations that survive termination hereof, including without limitation allocation of compensation in accordance with this Section 15(a). In the event that only part of the Premises shall be so taken or condemned, and the remainder of the Premises not taken or condemned is not reasonably adequate for Commercial Operation of the System, then Lessee shall have the option to: (i) terminate this Agreement and thereafter neither Party will have any liability or obligation hereunder, except (1) for those obligations that survive termination hereof, including without limitation allocation of compensation in accordance with this Section 15(a), and (2) that Lessee shall remove the System and shall be responsible for repairing any damage caused by such removal and shall restore the Premises to its condition as of the Effective Date within ninety (90) days after this Agreement has terminated, and subject to receipt by Lessee of any compensation payable in accordance with this Section 15(a); or (ii) remain in possession of that portion of the Premises that is not taken, in which case the parties shall amend this Agreement as reasonably necessary to reflect any reduction or, at Lessor’s sole discretion, relocation of the Premises or the System and preserve the benefit of the Agreement to Lessee to the extent reasonably possible, and Lessee shall be entitled to any compensation payable in connection with such portion of the Premises as has been taken in accordance with this Section

15(a). Any compensation paid in connection with a taking by eminent domain, whether pursuant to a judgment, by agreement or otherwise, including any damages and interest, shall be distributed to Lessee to the extent of any compensation paid that is attributable to the System such as: (a) the condemnation of or injury to the Lessee or the System, or (b) any cost or loss that Lessee may sustain in the removal and/or relocation of the System, or Lessee's chattels and trade fixtures. Any portion of such compensation not attributable to the System shall be retained by Lessor.

- (b) Force Majeure. Neither Party shall be required to perform its obligations under this Agreement to the extent the affected party is prevented from performing such obligations due to any occurrence or circumstance that is beyond such party's control and which could not be avoided through the exercise of reasonable diligence, including accident, breakage, strike national or regional in scope, delay in obtaining any governmental permit or license (to the extent not attributable to the actions or omissions of the affected party), shortage of materials, or other act of God; provided, however, that nothing contained in this Section 15(b) shall excuse either party from its obligation to perform any of its financial obligations under this Agreement, including without limitation, Lessee's obligation to pay Rent when due and to pay taxes when due. As a condition to the exercise by either party of its rights under this Section, such party shall (i) promptly notify the other party of the occurrence or circumstance that is preventing such affected party from performing its obligations under this Agreement, (ii) keep the other party notified of its efforts to remedy such occurrence or circumstance, and (iii) promptly resume performance under this Agreement as soon as possible.

16. Assignment.

Neither Party shall have the right to assign any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, and any such assignment shall be void; provided, however, that Lessee may in its sole reasonable discretion assign any of its rights, duties or obligations under this Agreement (i) to one or more of its Affiliates, (ii) to one or more third parties in connection with a collateral assignment of rights, mortgage or pledge (a "**Lender's Lien**"), (iii) to any present or future purchaser of the System, (iv) to any Person succeeding to all or substantially all of the assets of Lessee, or (v) to a successor entity in a merger or acquisition transaction; and provided, further, that, in the event of any assignment by Lessor in connection with the sale or transfer of the Premises, such assignment will be subject to the requirements of Section 8(a). For the avoidance of doubt, Lessor may sell any or part of its interest in the Premises subject to the requirements of Section 8(a).

Notwithstanding the foregoing, the Lessee shall have the right to sublease all or a portion of the leasehold estate created by this Agreement to the Clinton County Industrial Development Agency ("CCIDA") or an affiliate thereof pursuant to a lease/leaseback transaction between such Lessee and the CCIDA. Lessor consents to the recording or filing, at the sole cost of the Lessee, of a memorandum of such sublease as well as any corresponding lease back to the Lessee in the applicable registry; provided that Lessee shall provide Lessor with an opportunity to review such memorandum in advance of such filing.

17. Provisions Benefiting Lender.

- (a) Lender's Right to Possession, Right to Acquire and Right to Assign. A financing party providing financing to Lessee in connection with the System (each, a "**Lender**") shall have the absolute right to do one, some, or all of the following things: (a) assign its Lender's Lien; (b)

enforce its Lender's Lien; (c) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to (i) the leasehold interest created by this Agreement ("**Leasehold Interest**") or (ii) any sublease made by Lessee (a "**Sublease**"); (d) take possession of and operate the System or any portion thereof and perform any obligations to be performed by Lessee or a sublessee ("**Sublessee**") hereunder or under a Sublease (as applicable), or cause a receiver to be appointed to do so; (e) assign or transfer the Leasehold Estate or Sublease to a third party reasonably acceptable to Lessor, such approval not to be unreasonably withheld; or (f) exercise any rights of Lessee or a Sublessee hereunder or under a Sublease (as applicable). Except as set forth herein, Lessor's consent shall not be required for any of the foregoing; and, upon acquisition of the Leasehold Estate or a Sublease by a Lender or any other third party who acquires the same from or on behalf of the Lender or any purchaser who purchases at a foreclosure sale, Lessor shall recognize the Lender or such other party (as the case may be) as Lessee's or such Sublessee's proper successor, and the Agreement or the Sublease (as the case may be) shall remain in full force and effect.

- (b) Notice of Default. As a precondition to exercising any rights or remedies as a result of any default or alleged default by Lessee or a Sublessee, Lessor shall deliver a duplicate copy of the applicable notice of default (a "**Notice of Default**") to each Lender concurrently with delivery of such notice to Lessee or such Sublessee, as applicable, specifying in detail the alleged Event of Default, provided Lessor was given notice of such Lender as provided hereunder.
- (c) Cure. A Lender shall have the same period after receipt of a Notice of Default to remedy an Event of Default, or cause the same to be remedied, as is given to Lessee or a Sublessee after Lessee's or such Sublessee's receipt of a Notice of Default hereunder or under a Sublease (as applicable). The Lender shall have the absolute right to substitute itself or an Affiliate for Lessee or any Sublessee and perform the duties of Lessee or such Sublessee hereunder or under the Sublease (as applicable) for purposes of curing such Event of Default. Lessor expressly consents to such substitution, agrees to accept such performance, and authorizes the Lender, its Affiliate (or either of their employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all of the rights and privileges of Lessee or such Sublessee hereunder or under the Sublease (as applicable) upon prior written notice to Lessor. Lessor shall not terminate this Agreement or any Sublease prior to expiration of the cure periods available to a Lender as set forth above.
- (d) Deemed Cure; Extension. If any Event of Default by Lessee or a Sublessee under this Agreement or under the Sublease (as applicable) cannot be cured without obtaining possession of all or part of (a) the System, (b) the Leasehold Interest and/or (c) the Sublease, then any such Event of Default shall nonetheless be deemed remedied if: (i) within the appropriate time period as set forth in Section 17(b) after receiving notice from Lessor, a Lender acquires possession thereof, or commences appropriate judicial or non-judicial proceedings to obtain the same; (ii) the Lender is prosecuting any such proceedings to completion with commercially reasonable diligence; and (iii) after gaining possession thereof, the Lender performs all other obligations as and when the same are due in accordance with the terms of this Agreement or the Sublease, as the case may be. If a Lender is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any Bankruptcy or insolvency proceeding involving Lessee or a Sublessee, as the case may be, from commencing or prosecuting the proceedings described above, then the period specified above for commencing such proceedings shall be extended for the period of such prohibition.

- (e) Liability. A Lender that does not directly hold an interest in this Agreement or in a Sublease, or that holds a Lender's Lien, shall not have any obligation under this Agreement or such Sublease prior to the time that such Lender succeeds to absolute title to such interest. Any such Lender shall be liable to perform obligations under this Agreement or such Sublease only for and during the period of time that such Lender directly holds such absolute title. Further, in the event that a Lender elects to (a) perform Lessee's obligations under this Agreement or a Sublessee's obligations under a Sublease, (b) continue operations on the Premises, (c) acquire any portion of Lessee's or a Sublessee's right, title, or interest in the System, in this Agreement, or in a Sublease, or (d) enter into a new lease or new Sublease as provided in Section 17(f), then such Lender shall not have any personal liability to Lessor in connection therewith, and Lessor's sole recourse in the Event of Default by such Lender shall be to execute against such Lender's interest in the System. Notwithstanding the foregoing, the obligation to cure any outstanding payment default of Lessee shall not be excused by reason of succession of Lender to title in the Agreement.
- (f) New Lease to Lender. In the event that this Agreement or a Sublease (a) terminates because of Lessee's or any Sublessee's uncured Event of Default or (b) is rejected or disaffirmed pursuant to Bankruptcy law or any other law affecting creditors' rights, then, so long as a Lender has cured any such monetary Event of Default and is making commercially reasonable efforts to cure any such non-monetary Event of Default as provided herein, Lessor agrees, upon written request from such Lender received within ninety (90) days after any such event, to enter into a new lease or new sublease (as the case may be) in favor of such Lender, which new lease or new sublease shall (i) contain the same covenants, agreements, terms, provisions and limitations as this Agreement or the applicable Sublease (except for any requirements that have been fulfilled by Lessee or any Sublessee prior to such termination, foreclosure, rejection or disaffirmance), (ii) be for a term commencing on the date of such termination, foreclosure, rejection or disaffirmance, and continuing for the remaining term of this Agreement or such Sublease (as the case may be) before giving effect to such termination, foreclosure, rejection or disaffirmance, (iii) contain a lease (or other subordinate interest similar to said Sublease) of the Premises or such portion thereof as to which such Lender held a Lender's Lien on the date of such termination, foreclosure, rejection or disaffirmance, (iv) contain a grant to the Lender of access, transmission, communications, utility and other easements covering such portion or portions of the Premises in the same manner and extent as such were given to Lessee, and (v) enjoy the same priority as this Agreement or such Sublease over any lien, encumbrance or other interest created by Lessor; and, until such time as such new lease or sublease is executed and delivered, the Lender may enter, use and enjoy the Premises and conduct operations thereon as if the Agreement or Sublease (as the case may be) were still in effect, so long as Lender performs all obligations of Lessee as set forth in this Agreement. At the option of the Lender, the new lease or sublease may be executed by a designee of such Lender, without the Lender assuming the burdens and obligations of Lessee or the Sublessee thereunder. If more than one Lender makes a written request for a new lease or sublease pursuant hereto, then the same shall be delivered to the Lender whose Lender's Lien is senior in priority.
- (g) Further Amendments. At Lessee's or any Sublessee's request, Lessor may, in its sole discretion, amend this Agreement to include any provision that may reasonably be requested by an existing or proposed Lender, and shall execute such additional documents as may reasonably be required to evidence such Lender's rights hereunder; provided, however, that such amendment shall not materially impair the rights or materially increase the burdens or

obligations of Lessor under this Agreement, or extend the Term of this Agreement beyond the period of time stated in Section 9. Further, Lessor may, within ten (10) days after written notice from Lessee, a Sublessee or any existing or proposed Lender, execute and deliver thereto a certificate to the effect that Lessor (a) recognizes a particular entity as a Lender under this Agreement and (b) will accord to such entity all the rights and privileges of a Lender hereunder.

- (h) Subordination of Lien. Subject to the terms and conditions hereof, Lessor hereby subordinates any lien it may have in and to the System and other property that is or may from time to time hereafter be located at the Premises, and to which Lessee has granted or will grant a security interest to Lender (all such property and the records relating thereto shall be hereafter called the “**Collateral**”) to the lien of Lender; provided, however, that this subordination shall not prevent Lessor from exercising any right or remedy against Lessee to which Lessor may be entitled under the terms of the Agreement or as may be provided by Applicable Law; nor shall it prevent Lessor from realizing upon any lien it may have on any property of Lessee, including the Collateral, so long as Lessor recognizes Lender’s prior right to the Collateral described above. Lessor recognizes and acknowledges that any claim or claims (“**Claims**”) that Lender has or may have against such Collateral by virtue of any lien or security interest, are superior to any lien, security interest, or claim of any nature that Lessor now has or may hereafter have to such Collateral by statute, agreement or otherwise. The subordination provided for herein shall be effective until the discharge of the Claims. Lessor further agrees to notify any purchaser of the Premises, and any subsequent mortgagee or other encumbrance holder, of the existence of the foregoing waiver of Lessor’s lien, which shall be binding upon the executors, administrators, successors and transferees of Lessor, and shall inure to the benefit of the successors and assigns of Lender.

18. Defaults and Remedies.

- (a) Default. If a Party (“**Defaulting Party**”) fails to perform its obligations hereunder (an “**Event of Default**”), then it shall not be in default hereunder unless it fails to cure such Event of Default immediately if such Event of Default involves a hazardous condition, within ten (10) Business Days for any monetary Event of Default or, for any other Event of Default, within sixty (60) days after receiving written notice from the other Party (“**Non-Defaulting Party**”) stating with particularity the nature and extent of such Event of Default and specifying the method of cure (a “**Notice of Default**”); provided, however, that if the nature or extent of the obligation or obligations is such that more than sixty (60) days are required, in the exercise of commercially reasonable diligence, for performance of such obligation(s), then the Defaulting Party shall not be in default if it commences such performance within such 60-day period and thereafter pursues the same to completion with commercially reasonable diligence.
- (b) Payment Under Protest. The Defaulting Party may cure any monetary Event of Default by depositing the amount in controversy (not including claimed consequential, special, exemplary or punitive damages) in escrow with any reputable third party escrow, or by interpleading the same, which amount shall remain undistributed 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 or shall be used as evidence against the Defaulting Party.
- (c) Remedies. The Non-Defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate the Agreement

pursuant to Applicable Law, all of which remedies shall be cumulative. All such rights and remedies may be exercised and enforced concurrently, whenever and as often as necessary. Such remedies shall include the right in the Non-Defaulting Party to pay or perform any obligations of the Defaulting Party that have not been paid or performed as required hereunder, and to obtain (i) subrogation rights therefore and (ii) immediate reimbursement from the Defaulting Party for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance. Without limitation to the foregoing, in the event Lessor breaches any of its obligations hereunder or otherwise fails to permit Lessee to exercise any of the rights and privileges granted herein, Lessee shall have the right to specific enforcement of this Agreement.

19. Miscellaneous Provisions.

- (a) Entire Agreement. This Agreement represents the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and therein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.
- (b) Notices. Any notice required or permitted to be given in writing under this Agreement shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving Party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 19(b)). All such communications shall be mailed, sent or delivered, addressed to the Party for whom it is intended, at its address set forth below:

If to Fee Lessors:

Shanna Ashline
905 Fleetwood Drive
San Mateo, CA 94402

Neil Ashline
3519 Route 11
Mooers Forks, NY 12959

If to Life Tenant Lessors:

Larry Ashline and Marlene Ashline
297 Boas Road
Mooers, NY 12959

If to Lessee:

NY Mooers VI, LLC
33 Irving Place
New York, NY 10003
E-Mail: legal@delawareriversolar.com

Any such notice or communication shall be deemed to have been delivered: (a) if by certified mail, return receipt requested, overnight courier service, or personal delivery, the date of actual delivery to the addressee at the address provided above; or, (b) if by facsimile, upon electronic confirmation of receipt by the receiving facsimile machine.

- (c) Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.
- (d) Severability. If any clause, provision or section of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions of this Agreement.

- (e) Binding Effect. This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.
- (f) Construction of Document. Lessor and Lessee acknowledge that this document shall not be construed in favor of or against the drafter by virtue of said Party being the drafter.
- (g) Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.
- (h) Choice of Law; Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of New York (without regard to its conflict of laws principles). Each of the Parties hereto expressly and irrevocably subjects itself to the jurisdiction of the courts of New York and agrees that suit may be brought only in such courts with respect to any matters arising out of this Agreement.
- (i) Waiver of Jury Trial. THE PARTIES HERETO KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS LEASE OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF THE PARTIES HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS AGREEMENT.
- (j) Survival. Rights and obligations under this Agreement which by their nature should survive, including, but not limited to any and all payment obligations, shall remain in effect after termination or expiration hereof.
- (k) Amendments. No amendment or modification of this Agreement shall be binding unless in writing and duly executed by both Parties.
- (l) Lessee's Promotional Rights. Subject to Section 11 above, Lessee shall have the right to publish factual information related to the System on its website and through other forms of electronic media. Such information may include, but is not limited to, the location of the photovoltaic system and other features of the System.
- (m) Removal of Obstructions. With Lessor's consent, not to be unreasonably withheld, Lessee shall have the right, after commencement of the Term of this Agreement (but not before), at its sole expense, to remove obstructions from the Premises, including but not limited to vegetation, which may encroach upon, create a shadowing condition on the solar panels, interfere with or present a hazard to Lessee's use of the System on the Premises; provided that if Lessor does not respond to any such request within twenty (20) business days Lessor consent will be assumed to have been granted. Lessee shall promptly dispose of any materials removed and shall be solely responsible for the costs thereof. This section (m) shall be without limitation to Lessee's rights under Section 8(c) above.
- (n) Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent of this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

- (o) Memorandum of Agreement. Upon request by Lessee, Lessor and Lessee shall prepare, execute and record among the land records of the applicable registry a memorandum of this Agreement noticing the existence of the arrangements between Lessor and Lessee documented by this Agreement in a form as may be required by the applicable registry.
- (p) Estoppel. Either Party hereto, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other Person specified by such requesting Party.
- (i) That this Agreement is unmodified and in full force and effect, if such be the case, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;
 - (ii) Whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same;
 - (iii) The dates to which amounts due have been paid; and
 - (iv) Such other information as may be reasonably requested by a Party hereto.
- Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- (q) No Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a Party hereto, other than the Lessor Indemnities, the Lessee Indemnities and any secured parties and Lenders.
- (r) Exhibits. All exhibits referred to herein shall be considered a part hereof for all purposes with the same force and effect as if copied verbatim within the Agreement.
- (s) Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. "pdf" signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a photocopy of this Agreement in any court or arbitration proceedings between the Parties.

[remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Lessee and Lessor have executed this Agreement on the date first above written.

LESSOR:

Shanna L. Ashline

By: _____

Name: Shanna L. Ashline

Title: _____

Larry L. Ashline

By: _____

Name: Larry L. Ashline

Title: _____

Neil A. Ashline

By: _____

Name: Neil A. Ashline

Title: _____

Marlene L. Ashline

By: _____

Name: Marlene L. Ashline

Title: _____

LESSEE:

NY Mooers VI, LLC

By: Peter Dolgos

Name: Peter Dolgos

Title: SVP

EXHIBIT A

Description of Property

County Route 11
Mooers, NY 12959
Tax ID: 43.-1-16.11

Description of Premises

A portion of the property as depicted in the attached site plan, to be replaced by a legal description upon completion of a survey

