

CLOSING ITEM NO.: A-9

YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

MIDDLESEX-YATES SOLAR, LLC

UNIFORM AGENCY PROJECT AGREEMENT

DATED AS OF JUNE 1, 2018

RELATING TO FINANCIAL ASSISTANCE GRANTED BY THE
AGENCY WITH RESPECT TO A CERTAIN PROJECT LOCATED IN
THE TOWN OF MIDDLESEX, YATES COUNTY, NEW YORK.

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and is for convenience of reference only.)

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UNIFORM AGENCY PROJECT AGREEMENT

THIS UNIFORM AGENCY PROJECT AGREEMENT dated as of June 1, 2018 (the "Uniform Agency Project Agreement") by and between YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at One Keuka Business Park, Suite 104, Penn Yan, New York (the "Agency") and MIDDLESEX-YATES SOLAR, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware having an office for the transaction of business located at 601 13th Street NW, Suite 450 South, Washington, D.C. (the "Company");

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York, as amended; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 113 of the Laws of 1975 of the State, as amended, constituting Section 893-b of said General Municipal Law (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in April, 2017, SUN8 PDC LLC, a limited liability company organized and existing under the laws of the State of Delaware and the sole member of the Company (the "Parent"), presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Parent, said Project to include the following: (A)(1) the acquisition of an interest in an approximately 22.6 acre parcel of land located at 4450 Town Line Road (Tax Map #'s 3.01-1-4.1 and 4.2) in the Town of Middlesex, Yates County, New York (the "Land"), (2) the construction on the Land of a solar energy generating facility, including, but not limited to, PV modules, metal racks and steel earth screw foundations and electric equipment with related concrete foundations (collectively, the "Facility"), and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be operated by the Parent as a solar powered electricity generation facility and other directly and indirectly related activities;

(B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Parent or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Land is leased to the Parent pursuant to a certain site lease agreement for solar facility dated as of August 16, 2016 (the “Site Lease Agreement”) by and between Jeanette L. Daum, as fee title holder of the Land, and the Parent; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on April 26, 2017 (the “Public Hearing Resolution”), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on June 8, 2017 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on June 9, 2017 on a public bulletin board located at 1216 Route 245, in the Town of Middlesex, and 415 Liberty Street, in the Village of Penn Yan, Town of Milo, Yates County, New York, (C) caused notice of the Public Hearing to be posted on June 9, 2017 on the Agency’s website, (D) caused notice of the Public Hearing to be published on June 9, 2017 in Finger Lakes Times, a newspaper of general circulation available to the residents of Town of Middlesex, New York, (E) conducted the Public Hearing on June 19, 2017 at 9:00 o’clock a.m., local time at in the offices of the Agency located at One Keuka Business Park, Penn Yan, Yates County, New York, and (F) prepared a report of the Public Hearing (the “Public Hearing Report”) which fairly summarized the views presented at said Public Hearing and distributed to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on August 2, 2017 (the “Resolution Confirming SEQR Determination”), the Agency (A) concurred in the determination that the Town of Middlesex Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board dated April 11, 2017 (the “Negative Declaration”), in which the Planning Board determined that the Project will not have a “significant environmental impact on the environment” and accordingly, that an environmental impact statement is not required to be prepared with respect to the Project (as such quoted terms are defined in SEQRA); and

WHEREAS, by resolution adopted by the members of the Agency on August 2, 2017 (the “Pilot Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on August 2, 2017 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of June 1, 2018 (the “Lease Agreement”) between the Agency and the Parent and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”); and

WHEREAS, subsequent to the adoption of the Approving Resolution, the Parent notified the Agency that the Parent would like the Company to be the party entering into the Lease Agreement and the other Basic Documents; and

WHEREAS, the Agency has no objection to the Company entering into the Lease Agreement and the other Basic Documents in lieu of the Parent; and

WHEREAS, pursuant to a certain assignment agreement dated as of February 12, 2018 (the "Assignment Agreement") by and between the Parent and the Company, the Parent assigned to the Company rights, title and interest in certain assets specified therein, including the Site Lease Agreement; and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of June 1, 2018 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (2) a certain license agreement dated as of June 1, 2018 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of June 1, 2018 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of June 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility and (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company will execute and deliver the uniform agency project agreement (the "Uniform Agency Project Agreement") by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, (A) the Agency has established certain policies allowing denial of Financial Assistance to any project which does not deliver the public benefits promised at the time said project was approved by the Agency (the "Public Benefits"), (B) the Agency is unwilling to grant Financial Assistance to a project unless the beneficiary of such project agrees that the amount of Financial Assistance to be received by such beneficiary with respect to such project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of such project in delivering the promised Public Benefits, and (C) the Agency has created this Uniform Agency Project Agreement in order to establish the conditions under which the Agency will be entitled to recapture some or all of the Financial Assistance that has been granted to the Company under the Basic Documents if the Project is unsuccessful in whole or in part in delivering the promised Public Benefits; and

WHEREAS, the Company desires to receive certain Financial Assistance from the Agency with respect to the Project, and accordingly is willing to enter into this Uniform Agency Project Agreement in order to secure such Financial Assistance from the Agency; and

WHEREAS, all things necessary to constitute this Uniform Agency Project Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Uniform Agency Project Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE PREMISES AND THE MUTUAL COVENANTS HEREINAFTER CONTAINED, THE PARTIES HERETO HEREBY FORMALLY COVENANT, AGREE AND BIND THEMSELVES AS FOLLOWS TO WIT:

ARTICLE I

DEFINITIONS

SECTION 1.01. DEFINITIONS. All capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Lease Agreement. The following words and terms used in this Uniform Agency Project Agreement shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent.

“Application” means the application submitted by the Parent to the Agency in April, 2017 with respect to the Project, in which the Parent (A) described the Project, (B) requested that the Agency grant certain Financial Assistance with respect to the Project, and (C) indicated the Public Benefits that would result from approval of the Project by the Agency.

“Basic Documents” shall have the meaning set forth in the Lease Agreement, and includes this Uniform Agency Project Agreement.

“Completion Date” means the earlier to occur of (A) March 15, 2019 or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement, or (C) such earlier date as shall be designated by written communication from the Company to the Agency as the date of completion of the Project.

“Contract Employee” means (A) a full-time, private-sector employee (or self-employed individual) that is not on the Company’s payroll but who has worked for the Company at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee, or (B) 2 part-time, private-sector employees (or self-employed individuals) that are not on the Company’s payroll but who have worked for the Company at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks providing services that are similar to services that would otherwise be performed by a Full Time Equivalent Employee.

“Conveyance Documents” shall have the meaning set forth in the Lease Agreement.

“Equipment” shall have the meaning set forth in the Lease Agreement.

“Facility” shall have the meaning set forth in the Lease Agreement.

“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

“Full Time Equivalent Employee” means (A) a full-time, permanent, private-sector employee on the Company’s payroll, who has worked at the Project Facility for a minimum of 35 hours per week for not less than 4 consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (B) two part-time, permanent, private-sector employees on Company’s payroll, who have worked at the Project Facility for a combined minimum of 35 hours per week for not less than 4 consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by the Company to other employees with comparable rank and duties; or (C) a Contract Employee.

“Financial Assistance” means exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes as more particularly described in the Basic Documents.

“Land” means an approximately 22.6 acre parcel of land located at 4450 Town Line Road in the Town of Middlesex, Yates County, New York, as more particularly described in Exhibit A to the Lease Agreement.

“Lease Agreement” means the lease agreement dated as of June 1, 2018, by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of June 1, 2018, by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

“Pilot Payments” means payments in lieu of taxes with respect to the Project Facility pursuant to the provisions of the Payment in Lieu of Tax Agreement.

“Project” shall have the meaning set forth in the Lease Agreement.

“Project Facility” shall have the meaning set forth in the Lease Agreement.

“Recapture Events” shall mean the following:

(1) failure to complete the acquisition, remediation, construction and installation of the Project Facility;

(2) failure by the Company to meet at least eighty percent (80%) of the Local Purchases Level requirements contained in Section 3.02(D)(1) hereof;

(3) liquidation of substantially all of the Company’s operating assets and/or cessation of substantially all of the Company’s operations;

(4) relocation of all or substantially all of Company’s operations at the Project Facility to another site;

(5) the sale, lease or other disposition of all or substantially all of the Project Facility to an individual or entity that abandons the Project;

(6) failure by the Company to comply with the annual reporting requirements or to provide the Agency with reasonably requested information;

(7) sublease of all or part of the Project Facility in violation of Basic Documents;

(8) a change in the use of the Project Facility, other than as condominium complex;
or

(9) failure by the Company to make an actual investment in the Project by the Completion Date equal to or exceeding 80% of the Total Project Costs as set forth in the Application.

“Recapture Period” means the approximately thirty (30) year period expiring on December 31, 2049.

SECTION 1.2. INTERPRETATION. In this Uniform Agency Project Agreement, unless the context otherwise requires:

(A) the terms “hereby”, “hereof”, “herein”, “hereunder” and any similar terms as used in this Uniform Agency Project Agreement, refer to this Uniform Agency Project Agreement, and the term “heretofore” shall mean before, and the term “hereafter” shall mean after, the date of this Uniform Agency Project Agreement;

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;

(C) words importing the singular number shall mean and include the plural number, and vice versa;

(D) any headings preceding the texts of the several Articles and Sections of this Uniform Agency Project Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Uniform Agency Project Agreement nor affect its meaning, construction or effect; and

(E) any certificates, letters or opinions required to be given pursuant to this Uniform Agency Project Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Uniform Agency Project Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

SECTION 2.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into this Uniform Agency Project Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 2.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is limited liability company duly organized and validly existing under the laws of the New York, is duly authorized to do business in the State of New York and has the power under the laws of the New York to enter into this Uniform Agency Project Agreement and to perform and carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement, and by proper action of its board of directors has been duly authorized to execute, deliver and perform this Uniform Agency Project Agreement.

(B) Authorization. The Company is authorized and has the power under its Articles of Organization, Operating Agreement and the laws of the New York to enter into this Uniform Agency Project Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Uniform Agency Project Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Uniform Agency Project Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement by (and the execution, delivery

and performance of this Uniform Agency Project Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Uniform Agency Project Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Uniform Agency Project Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Uniform Agency Project Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Uniform Agency Project Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Uniform Agency Project Agreement by the Company or as a condition to the validity of this Uniform Agency Project Agreement.

ARTICLE III

COVENANTS AND AGREEMENTS

SECTION 3.01. FINANCIAL ASSISTANCE. (A) Financial Assistance. In the Application, the Company certified to the Agency employment information with respect to the Project Facility, and the operations of the Company. In reliance on the certifications provided by the Company in the Application, the Agency agrees to provide the Company with the following Financial Assistance related to the Project:

- | | |
|---|-------------|
| (1) sales and use tax exemptions: | \$261,294 |
| (2) a mortgage recording tax exemption: | \$0 |
| (3) a real property tax exemption: | \$1,670,505 |

(B) Description of Project and Public Purpose of Granting Financial Assistance to the Project. In the Application and in the discussions had between the Company and the Agency with respect to the Company's request for Financial Assistance from the Agency with respect to the Project, the Company has represented to the Agency as follows:

(1) That the Project is described as follows: (A)(1) the acquisition of an interest in an approximately 22.6 acre parcel of land located at 4450 Town Line Road (Tax Map #'s 3.01-1-4.1 and 4.2) in the Town of Middlesex, Yates County, New York (the "Land"), (2) the construction on the Land of a solar energy generating facility, including, but not limited to, PV modules, metal racks and steel earth screw foundations and electric equipment with related concrete foundations (collectively, the "Facility"), and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be operated by the Company as a solar powered electricity generation facility and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

(2) That the Project will furnish the following benefits to the residents of Yates County, New York (the "Public Benefits"): see Exhibit A to the Approving Resolution.

(C) Payment in Lieu of Tax Agreement. A copy of the Payment in Lieu of Tax Agreement is attached as Schedule C. The attached Payment in Lieu of Tax Agreement describes the dates the payments in lieu of taxes are to be made and includes a table describing the amount of payments in lieu of taxes to be made.

(D) Contingent Nature of the Financial Assistance. Notwithstanding the provisions of Section 3.01(A) of this Uniform Agency Project Agreement, the Agency and the Company agree that the amount of Financial Assistance to be received by the Company with respect to the Project shall be contingent upon, and shall bear a direct relationship to, the success or lack of success of the Project in delivering the promised Public Benefits.

SECTION 3.02. COMPANY AGREEMENTS. The Company hereby agrees as follows:

(A) Filing – Closing Date. To file with the Agency, prior to the Closing Date, an employment plan, in substantially the form attached as Exhibit F to the Lease Agreement.

(B) Filing – Annual. To file with the Agency, on an annual basis, reports regarding the number of people employed at the Project Facility and certain other matters, including as required under Applicable Law, the initial said annual employment report to be in substantially the form annexed as Exhibit G to the Lease Agreement.

(C) Employment Listing. To list new employment opportunities created as a result of the Project with the following entities (hereinafter, the “JTPA Entities”): (1) the New York State Department of Labor Community Services Division and (2) the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)). The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(D) Employment Consideration. Except as otherwise provided by collective bargaining agreement, the Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the JTPA Entities.

(E) Employment Level/Local Purchases Level. (1) The Company hereby certifies the following with respect to employment information relating to the acquisition, construction, and installation of the Project Facility:

(a) To maintain, as described in the Application, the following employment level (the “Employment Level”) during the term of the Uniform Agency Project Agreement, beginning no later than one (1) year after the Completion Date:

Year	Total Employees
2018	-0-
2019	-0-
2020 and thereafter	0 Full Time Equivalent Employees

(b) To make purchases, or to cause to make purchases, with respect to the acquisition, construction and installation of the Project Facility from local vendors and materialmen located in Yates County (and the other counties immediately adjacent to Yates County) in an amount of at least \$100,000 (the “Local Purchases Level”).

(2) (a) To verify that the Employment Level is being achieved at the Project Facility and the information contained in the Annual Status Report, the Company is required to submit, or cause to be submitted, within sixty (60) days after the end of each calendar year: a form NYS-45 as of the last payroll date in the month of December (the “Quarterly Report,” a copy of which is attached hereto as Schedule A and, together with the Annual Status Report

described in Section 3.02(B) above, being collectively referred to as the “Employment Affidavits”) or some other form that is explicitly approved by the Agency. Full Time Equivalent Employees for each calendar year during the term of this Uniform Agency Project Agreement shall be the number reported in the Employment Affidavits delivered by the Company pursuant to Section 3.02(B) and this Section 3.02(E)(2).

(F) Non-Discrimination. (1) At all times during the term of this Project Benefit Agreement, the Company shall not discriminate against any employee or applicant for employment because of race, color, creed, age, sex or national origin. The Company shall use its best efforts to ensure that employees and applicants for employment with the Company or any subtenant of the Project Facility are treated without regard to their race, color, creed, age, sex or national origin. As used herein, the term “treated” shall mean and include, without limitation, the following: recruited, whether by advertising or other means; compensated, whether in the form of rates of pay or other forms of compensation; selected for training, including apprenticeship; promoted; upgraded; downgraded; demoted; transferred; laid off; and terminated.

(2) The Company agrees that, in all solicitations or advertisements for employees placed by or on behalf of the Company during the term of this Project Benefit Agreement, the Company will state in substance that all qualified applicants will be considered for employment without regard to race, color, creed or national origin, age or sex.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

SECTION 4.01. EVENTS OF DEFAULT DEFINED. (A) The following shall be “Events of Default” under this Uniform Agency Project Agreement, and the terms “Event of Default” or “default” shall mean, whenever they are used in this Uniform Agency Project Agreement, any one or more of the following events:

- (1) A default in the performance or observance of any of the covenants, conditions or agreements on the part of the Company in this Uniform Agency Project Agreement and the continuance thereof for a period of thirty (30) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such thirty (30) day period, the failure of the Company to commence to cure within such thirty (30) day period and to prosecute the same with due diligence.
- (2) The occurrence of an “Event of Default” under any other Basic Document.
- (3) Any representation or warranty made by the Company herein or in any other Basic Document proves to have been false at the time it was made.

SECTION 4.02. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- (1) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 of the Lease Agreement, and (b) all other payments due under this Uniform Agency Project Agreement or any of the other Basic Documents; or
- (2) terminate the Lease Agreement and the Payment in Lieu of Tax Agreement and convey to the Company all the Agency’s right, title and interest in and to the Project Facility (The conveyance of the Agency’s right, title and interest in and to the Project Facility shall be effected by the delivery by the Agency of the Termination of Lease to Agency and the Bill of Sale to Company. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of title); or
- (3) take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Uniform Agency Project Agreement.

(B) No action taken pursuant to this Section 4.02 (including repossession of the Project Facility) shall relieve the Company from its obligations to make any payments required by this Uniform Agency Project Agreement and the other Basic Documents.

SECTION 4.03. RECAPTURE OF FINANCIAL ASSISTANCE. (A) General. Upon the occurrence of a Recapture Event that occurs during the Recapture Period, the Agency may require the Company to provide for the recapture of the project financial assistance (the “Project Financial Assistance”), all in

accordance with the terms of this Section 4.03. The Company hereby agrees, if requested by the Agency, to pay to the Agency the recapture of the Project Financial Assistance, as provided in this Section 4.03.

(B) Project Financial Assistance to be Recaptured. The Project Financial Assistance to be recaptured by the Agency upon the occurrence of a Recapture Event during a Recapture Period shall be an amount equal to the sum of the following:

(1) the portion of the amount of New York State sales and use taxes allocable to Yates County that the Company would have paid in connection with the undertaking of the Project if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency;

(2) the amount of any mortgage recording tax exemption provided by the Agency to the Company in connection with the undertaking of the Project; and

(3) the difference between the amount of the payment in lieu of tax payments paid by the Company under the Payment in Lieu of Tax Agreement and the amount of the general real property ad valorem taxes that would have been payable by the Company to the Taxing Entities if the Project Facility was privately owned by the Company and not deemed owned or under the jurisdiction and control of the Agency.

(C) Amount of Project Financial Assistance to be Recaptured. Upon the occurrence of a Recapture Event, the Company shall pay the following amounts as recapture:

Year	Amount of Recapture
1	97% of the Project Financial Assistance
2	94% of the Project Financial Assistance
3	91% of the Project Financial Assistance
4	88% of the Project Financial Assistance
5	85% of the Project Financial Assistance
6	82% of the Project Financial Assistance
7	79% of the Project Financial Assistance
8	76% of the Project Financial Assistance
9	73% of the Project Financial Assistance
10	70% of the Project Financial Assistance
11	67% of the Project Financial Assistance
12	64% of the Project Financial Assistance
13	61% of the Project Financial Assistance
14	58% of the Project Financial Assistance
15	55% of the Project Financial Assistance
16	52% of the Project Financial Assistance
17	49% of the Project Financial Assistance
18	46% of the Project Financial Assistance
19	43% of the Project Financial Assistance
20	40% of the Project Financial Assistance
21	37% of the Project Financial Assistance
22	34% of the Project Financial Assistance
23	31% of the Project Financial Assistance
24	28% of the Project Financial Assistance

25	25% of the Project Financial Assistance
26	22% of the Project Financial Assistance
27	19% of the Project Financial Assistance
28	16% of the Project Financial Assistance
29	13% of the Project Financial Assistance
30	10% of the Project Financial Assistance

(D) Redistribution of Project Financial Assistance to be Recaptured. Upon the receipt by the Agency of any amount of Project Financial Assistance pursuant to this Section 4.03, the Agency shall redistribute such amount within thirty (30) days of such receipt to the Taxing Entity that would have received such amount but for the granting by the Agency of the Project Financial Assistance.

(E) Survival of Obligations. The Company acknowledges that the obligations of the Company in this Section 4.03 shall survive the conveyance of the Project Facility to the Company and the termination of the Lease Agreement.

(F) Agency Review of Recapture Determination. The Agency's determination to recapture all or a portion of the Project Financial Assistance shall be made by the Agency after an evaluation of the criteria for recapture set forth in the Agency's "Policy Respecting Recapture of Project Benefits" as in effect as of the Closing Date (a copy of which policy is attached hereto as Schedule B). If the Agency determines that a Recapture Event has occurred, it shall give notice of such determination to the Company. The Company shall have thirty (30) days from the date the notice is deemed given to submit a written response to the Agency's determination and to request a written and/or oral presentation to the Agency why the proposed recapture amount should not be paid to the Agency. The Company may make its presentation at a meeting of the Agency. The Agency shall then vote on a resolution recommending (i) a termination of Financial Assistance, (ii) a recapture of Financial Assistance, (iii) both a termination and a recapture of Finance Assistance, (iv) a modification of Financial Assistance or (v) no action.

SECTION 4.04. LATE PAYMENTS. (A) One Month. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement within thirty days of the date that written notice of such payment is sent from the Agency to the Company at the address provided in Section 4.05 of this Uniform Agency Project Agreement, the Company shall pay the amount specified in such notice together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Uniform Agency Project Agreement when due and such delinquency shall continue beyond the thirty days after such notice, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the Agency until such payment in default shall have been made in full, and the Company shall pay the same to the Agency together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

SECTION 4.05. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. If the Company should default in performing any of its obligations, covenants or agreements under this Uniform Agency Project Agreement and the Agency should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on

demand therefor, pay to the Agency not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.06. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Uniform Agency Project Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of a Recapture Event or an Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency to exercise any remedy reserved to it in this Uniform Agency Project Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Uniform Agency Project Agreement.

(D) No Waiver. In the event any provision contained in this Uniform Agency Project Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Uniform Agency Project Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. This Uniform Agency Project Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the execution and delivery of this Uniform Agency Project Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Uniform Agency Project Agreement shall continue to remain in effect until December 31, 2029.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Uniform Agency Project Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Uniform Agency Project Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Middlesex-Yates Solar, LLC
601 13th Street NW – Suite 450 South
Washington, D.C. 20005
Attention: Jeffrey Weiss, Co-Manager

WITH A COPY TO:

Hancock Estabrook, LLP
1500 AXA Tower I - 100 Madison Street
Syracuse, New York 13202
Attention: Richard W. Cook, Esq.

IF TO THE AGENCY:

Yates County Industrial Development Agency
One Keuka Business Park, Suite 104
Penn Yan, New York 14527
Attention: Chairman

WITH A COPY TO:

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: A. Joseph Scott, III, Esq.

(C) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Uniform Agency Project Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Uniform Agency Project Agreement are intended to be for the benefit of the Agency.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Uniform Agency Project Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Uniform Agency Project Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Uniform Agency Project Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Uniform Agency Project Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

YATES COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY: *Gene Pease*
Authorized Officer

MIDDLESEX-YATES SOLAR, LLC

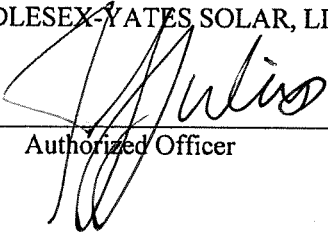
BY: _____
Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Uniform Agency Project Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

YATES COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____
Authorized Officer

MIDDLESEX-YATES SOLAR, LLC

BY:  _____
Authorized Officer

STATE OF NEW YORK)
) ss.:
COUNTY OF YATES)

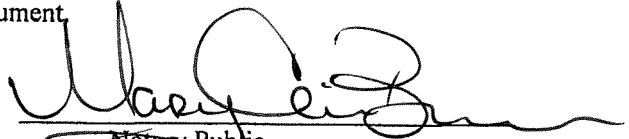
On the 1st day of June in the year 2018, before me, the undersigned, personally appeared GENE PIERCE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Doreen J. Jensen
Notary Public

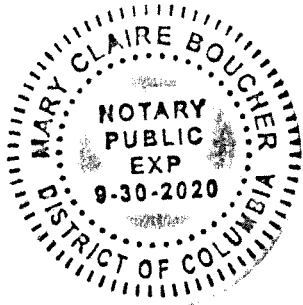
Doreen J. Jensen
Notary Public, State of New York
Qualified in Yates County
No. 01JE6139490
My Commission Expires 01/12/2021

DISTRICT OF COLUMBIA)
) ss.:

On the 15 day of June in the year 2018, before me, the undersigned, personally appeared JEFFREY WEISS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

MARY CLAIRE BOUCHER
NOTARY PUBLIC
DISTRICT OF COLUMBIA
My Commission Expires Sept. 30, 2020



SCHEDULE A
NYS-45 QUARTERLY REPORT

NYS-45 (12/15)

Quarterly Combined Withholding, Wage Reporting, And Unemployment Insurance Return



Reference these numbers in all correspondence:

Mark an X in only one box to indicate the quarter (a separate return must be completed for each quarter) and enter the year.

UI Employer registration number

1 Jan 1 - Mar 31
 2 Apr 1 - Jun 30
 3 July 1 - Sep 30
 4 Oct 1 - Dec 31
 Year

For office use only
Postmark

Withholding identification number

Are dependent health insurance benefits available to any employee? Yes No

Received date

Employer legal name:

If seasonal employer, mark an X in the box

Number of employees
Enter the number of full-time and part-time covered employees who worked during or received pay for the week that includes the 12th day of each month.

a. First month	b. Second month	c. Third month	UI SK	AI	SI	WT SK
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Part A - Unemployment insurance (UI) information

1. Total remuneration paid this quarter 00

2. Remuneration paid this quarter in excess of the UI wage base since January 1 (see instr.) 00

3. Wages subject to contribution (subtract line 2 from line 1) 00

4. UI contributions due
Enter your UI rate %

5. Re-employment service fund (multiply line 3 x .00075)

6. UI previously underpaid with interest

7. Total of lines 4, 5, and 6

8. Enter UI previously overpaid

9. Total UI amounts due (if line 7 is greater than line 8, enter difference) ...

10. Total UI overpaid (if line 8 is greater than line 7, enter difference and mark box 11 below)*

11. Apply to outstanding liabilities and/or refund

Part B - Withholding tax (WT) information

12. New York State tax withheld

13. New York City tax withheld

14. Yonkers tax withheld

15. Total tax withheld (add lines 12, 13, and 14)

16. WT credit from previous quarter's return (see instr.)

17. Form NYS-1 payments made for quarter

18. Total payments (add lines 16 and 17)

19. Total WT amount due (if line 15 is greater than line 18, enter difference) ...

20. Total WT overpaid (if line 18 is greater than line 15, enter difference here and mark an X in 20a or 20b)* ...

20a. Apply to outstanding liabilities and/or refund **OR**

20b. Credit to next quarter withholding tax

21. Total payment due (add lines 9 and 19; make one remittance payable to NYS Employment Contributions and Taxes)

* An overpayment of either UI contributions or withholding tax cannot be used to offset an amount due for the other.

Complete Parts D and E on back of form, if required.

Part C - Employee wage and withholding information

Quarterly employee/payee wage reporting information (If more than five employees or if reporting other wages, do not make entries in this section; complete Form NYS-45-ATT. Do not use negative numbers; see instructions.)					Annual wage and withholding totals	
a	b	c	d	e	f	
Social security number	Last name, first name, middle initial	Total UI remuneration paid this quarter	Gross federal wages or distribution (see instructions)	Total NYS, NYC, and Yonkers tax withheld	If this return is for the 4th quarter or the last return you will be filing for the calendar year, complete columns d and e	

Totals (column c must equal remuneration on line 1; see instructions for exceptions)

Sign your return: I certify that the information on this return and any attachments is to the best of my knowledge and belief true, correct, and complete.

Signature (see instructions) _____ Signer's name (please print) _____ Title _____

Date Telephone number

Withholding identification number



Part D - Form NYS-1 corrections/additions

Use Part D only for corrections/additions for the quarter being reported in Part B of this return. To correct original withholding information reported on Form(s) NYS-1, complete columns a, b, c, and d. To report additional withholding information not previously submitted on Form(s) NYS-1, complete **only** columns c and d. Lines 12 through 15 on the front of this return **must** reflect these corrections/additions.

a Original last payroll date reported on Form NYS-1, line A (mmdd)	b Original total withheld reported on Form NYS-1, line 4	c Correct last payroll date (mmdd)	d Correct total withheld
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Part E - Change of business information

22. This line is not in use for this quarter.

23. If you permanently ceased paying wages, enter the date (mmddyy) of the final payroll (see Note below)

24. If you sold or transferred all or part of your business:

• Mark an X to indicate whether in whole or in part

• Enter the date of transfer (mmddyy)

• Complete the information below about the acquiring entity

Legal name	EIN
Address	

Note: For questions about other changes to your withholding tax account, call the Tax Department at (518) 485-6654; for your unemployment insurance account, call the Department of Labor at (518) 485-8589 or 1 888 899-8810. If you are using a paid preparer or a payroll service, the section below must be completed.

Paid preparer's use	Preparer's signature	Date	Preparer's NYTPRIN	Preparer's SSN or PTIN	NYTPRIN excl. code
	Preparer's firm name (or yours, if self-employed)	Address	Firm's EIN	Telephone number ()	
Payroll service's name				Payroll service's EIN	<input type="text"/>

Checklist for mailing:

- File original return and keep a copy for your records.
- Complete lines 9 and 19 to ensure proper credit of payment.
- Enter your withholding ID number on your remittance.
- Make remittance payable to *NYS Employment Contributions and Taxes*.
- Enter your telephone number in boxes below your signature.
- See *Need help?* on Form NYS-45-1 if you need forms or assistance.

Mail to:

NYS EMPLOYMENT
CONTRIBUTIONS AND TAXES
PO BOX 4119
BINGHAMTON NY 13902-4119

SCHEDULE B

POLICY RESPECTING RECAPTURE OF PROJECT BENEFITS

SECTION 1. PURPOSE AND JUSTIFICATION. (A) The purpose of this Policy is to provide the uniform criteria to be utilized by Yates County Industrial Development Agency (the “Agency”) to evaluate and select projects from each category of eligible projects for which the Agency can provide financial assistance.

(B) The Agency was created pursuant to Section 893-b of Title 2 of Article 18-A of the General Municipal Law and Title 1 of Article 18-A the General Municipal Law (collectively, the “Act”) for the purpose of promoting employment opportunities for, and the general prosperity and economic welfare of, residents of Yates County, New York (the “County”) and the State of New York (the “State”). Under the Act, the Agency was created in order to advance the job opportunities, health, general prosperity, and economic welfare of the residents of the County and of the State.

(C) Chapter 563 of the Laws of 2015, effective June 15, 2016 (the “Reform Legislation”), requires each industrial development agency to adopt an assessment of all material information included in connection with an application for financial assistance, as necessary to afford a reasonable basis for the decision by an industrial development agency to provide financial assistance for a project.

SECTION 2. ELIGIBLE PROJECT CATEGORIES. The Agency may provide financial assistance to any “project,” as defined in Section 854 of the Act.

SECTION 3. UNIFORM CRITERIA. (A) The following general uniform criteria will apply to all categories of eligible projects: (1) Extent to which a project will create or retain jobs; (2) Estimated value of tax exemptions; (3) Amount of private sector investment; (4) Likelihood of project being accomplished in a timely fashion; (5) Extent of new revenue provided to local taxing jurisdictions; (6) Any additional public benefits; and (7) Local labor construction jobs.

(B) The following additional criteria may apply to warehousing and research projects: (1) wage rates (above median for County); (2) in County purchases (% of purchases from local vendors); (3) supports local businesses or clusters; (4) retention or flight risk; and (5) provides capacity to meet County demand or shortage.

(C) The following additional criteria may apply to commercial projects: (1) regional wealth creation (% of sales/customers outside of the County); (2) located in a highly distressed census tract; (3) alignment with local planning and development efforts; (4) promotes walkable community areas; (5) elimination or reduction in blight; (6) proximity/support of regional tourism attractions/facilities; (7) local or County official support; (8) building or site has historic designation; and (9) provides brownfield remediation.

SECTION 4: REMOVAL OR ABANDONMENT. If the proposed project involves the removal or abandonment of a facility or plant within the state, the Agency will notify the chief executive officer or officers of the municipality or municipalities in which the facility or plant was located.

SECTION 5. EFFECTIVE DATE. This policy shall be effective with respect to any project undertaken by the Agency after the date of approval of this Policy.

SCHEDULE C

COPY OF PAYMENT IN LIEU OF TAX AGREEMENT

- SEE ATTACHED -

CLOSING ITEM NO.: A-7

YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

MIDDLESEX-YATES SOLAR, LLC

PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF JUNE 1, 2018

RELATING TO THE PREMISES LOCATED 4450 TOWN LINE ROAD IN
THE TOWN OF MIDDLESEX, YATES COUNTY, NEW YORK.

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SCHEDULE A – Amount of Payments in Lieu of Taxes

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT dated as of June 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at One Keuka Business Park, Suite 104, Penn Yan, New York (the "Agency"), and MIDDLESEX-YATES SOLAR, LLC, limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business located at 601 13th Street NW, Suite 450 South, Washington, D.C. (the "Company");

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 24 of the Consolidated Laws of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York, as amended; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 113 of the Laws of 1975 of the State, as amended, constituting Section 893-b of said General Municipal Law (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, in April, 2017, SUN8 PDC LLC, a limited liability company organized and existing under the laws of the State of Delaware and the sole member of the Company (the "Parent"), presented an application (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Parent, said Project to include the following: (A)(1) the acquisition of an interest in an approximately 22.6 acre parcel of land located at 4450 Town Line Road in the Town of Middlesex, Yates County, New York (the "Land"), (2) the construction on the Land of a solar energy generating facility, including, but not limited to, PV modules, metal racks and steel earth screw foundations and electric equipment with related concrete foundations (collectively, the "Facility"), and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be operated by the Parent as a solar powered electricity generation facility and other directly and indirectly related activities; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions

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from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Parent or such other person as may be designated by the Parent and agreed upon by the Agency; and

WHEREAS, the Land is leased to the Parent pursuant to a certain site lease agreement for solar facility dated as of August 16, 2016 (the "Site Lease Agreement") by and between Jeanette L. Daum, as fee simple owner of the Land (the "Owner"), and the Parent; and

WHEREAS, the Land is comprised of two (2) parcels consisting of Tax Map # 3.01-1-4.1 and Tax Map # 3.01-1-4.2 (collectively, the "Underlying Parcels"), of which the Assessor of the Town of Middlesex, New York, in connection with the Project, has created additional tax reference identifications of Tax Map # 3.01-1-4.1-1 and Tax Map # 3.01-1-4.2-1 (collectively, the "Overlay Parcels"), with the Overlay Parcels consisting solely of the leasehold interest of the Company in the Overlay Parcels and the improvements placed thereon granted pursuant to the Lease Agreement (as defined herein); and

WHEREAS, in connection with the provision of the Financial Assistance to the Company, it is the intention of the Agency to file a RP-412-a with the assessor and the chief executive officer of each Affected Tax Jurisdiction (as defined herein) relating solely to the Overlay Parcels in order to remove the Overlay Parcels from the tax rolls of the Affected Tax Jurisdictions; and

WHEREAS, as the Owner will continue to pay property taxes on the Underlying Parcels, it is not the intention of the Agency to remove the Underlying Parcels from the tax rolls of the Affected Tax Jurisdictions; and

WHEREAS, among other purposes, this Payment in Lieu of Tax Agreement is being entered into between the parties hereto in order to set forth the payments to be made by the Company to the Taxing Entities (as defined herein) relating solely to the Overlay Parcels; and

WHEREAS, all references to the Project Facility herein relate solely to the Overlay Parcels; and

WHEREAS, pursuant to the authorization contained in a resolution adopted by the members of the Agency on April 26, 2017 (the "Public Hearing Resolution"), the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the "Public Hearing") pursuant to Section 859-a of the Act to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on June 8, 2017 to the chief executive officers of the county and of each city, town, village and school district in which the Project is to be located, (B) caused notice of the Public Hearing to be posted on June 9, 2017 on a public bulletin board located at 1216 Route 245, in the Town of Middlesex, and 415 Liberty Street, in the Village of Penn Yan, Town of Milo, Yates County, New York, (C) caused notice of the Public Hearing to be posted on June 9, 2017 on the Agency's website, (D) caused notice of the Public Hearing to be published on June 9, 2017 in Finger Lakes Times, a newspaper of general circulation available to the residents of Town of Middlesex, New York, (E) conducted the Public Hearing on June 19, 2017 at 9:00 o'clock a.m., local time at in the offices of the Agency located at One Keuka Business Park, Penn Yan, Yates County, New York, and (F) prepared a report of the Public Hearing (the "Public Hearing Report") which fairly summarized the views presented at said Public Hearing and distributed to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), by resolution adopted by the members of the Agency on

August 2, 2017 (the "Resolution Confirming SEQR Determination"), the Agency (A) concurred in the determination that the Town of Middlesex Planning Board (the "Planning Board") is the "lead agency" with respect to SEQRA and (B) acknowledged receipt of a negative declaration from the Planning Board dated April 11, 2017 (the "Negative Declaration"), in which the Planning Board determined that the Project will not have a "significant environmental impact on the environment" and accordingly, that an environmental impact statement is not required to be prepared with respect to the Project (as such quoted terms are defined in SEQRA); and

WHEREAS, by resolution adopted by the members of the Agency on August 2, 2017 (the "Pilot Deviation Approval Resolution"), the members of the Agency determined to deviate from the Agency's uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on August 2, 2017 (the "Approving Resolution"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of June 1, 2018 (the "Lease Agreement") between the Agency and the Parent and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the "Basic Documents"); and

WHEREAS, subsequent to the adoption of the Approving Resolution, the Parent notified the Agency that the Parent would like the Company to be the party entering into the Lease Agreement and the other Basic Documents; and

WHEREAS, the Agency has no objection to the Company entering into the Lease Agreement and the other Basic Documents in lieu of the Parent; and

WHEREAS, pursuant to a certain assignment agreement dated as of February 12, 2018 (the "Assignment Agreement") by and between the Parent and the Company, the Parent assigned to the Company rights, title and interest in certain assets specified therein, including the Site Lease Agreement; and

WHEREAS, pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company will execute and deliver to the Agency (1) a certain lease to agency dated as of June 1, 2018 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will sublease to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (2) a certain license agreement dated as of June 1, 2018 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of June 1, 2018 (the "Bill of Sale to Agency"), which conveys to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of June 1, 2018 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the

Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company will execute and deliver the uniform agency project agreement (the "Uniform Agency Project Agreement") by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement, (E) the Agency will execute and deliver to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report"); and

WHEREAS, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "Real Property Tax Law"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

WHEREAS, pursuant to the provisions of Section 6.6 of the Lease Agreement, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Lease Agreement shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

WHEREAS, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

NOW, THEREFORE, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I
REPRESENTATIONS AND WARRANTIES

SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY. The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY. The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization and its operating agreement to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not

conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its articles of organization or its operating agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

ARTICLE II

COVENANTS AND AGREEMENTS

SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY. (A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of the Project Facility by the Agency and the filing by the Agency of a New York State Board of Real Property Services Form RP-412-a (a "Real Property Tax Exemption Form") with respect to the Project Facility, and for so long thereafter as the Agency shall own the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Lease to Agency and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Lease to Agency, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "Assessor"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Lease Agreement, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special ad valorem levies. Pursuant to the Lease Agreement, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

SECTION 2.02. PAYMENTS IN LIEU OF TAXES. (A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to the respective appropriate officer or officers of the respective Taxing Entities charged with receiving payments of taxes for such Taxing Entities (such officers being collectively hereinafter referred to as the "Receivers of Taxes") for distribution by the Receivers of Taxes to the appropriate Taxing Entities entitled to receive same pursuant to the provisions hereof.

(B) Valuation of the Project Facility. (1) The value of the Project Facility (hereinafter referred to as the "Assessed Value") shall be determined by the appropriate Assessors. The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Project Facility in the same manner as other similar properties in the general area of the Project Facility and (b) place an Assessed Value upon the Project Facility, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Project Facility and of any change in the Assessed Value of the Project Facility.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Project Facility as initially established or with the amount of the Assessed Value of the Project Facility as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Assessed Value of the Project Facility, or of a change in such Assessed Value of the Project Facility, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Assessed Value of the Project Facility for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Assessed Value has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Assessed Value or to determine a higher or a lower Assessed Value. Any payments in lieu of taxes due upon the Project Facility pursuant to Section 2.02(C) hereof may not be withheld by the Company pending determination of the Assessed Value by the arbitrators.

(3) The parties hereto agree and recognize that the Assessed Value determined pursuant to this Section 2.02(B) is not required to calculate the payments in lieu of taxes due under Section 2.02(C) hereof.

(C) Amount of Payments in Lieu of Taxes. (1) The actual capacity of the Project Facility in megawatts will be determined upon completion of construction of the Project Facility. During the term of this Payment in Lieu of Tax Agreement, the Company agrees to make the following payments to the Receivers of Taxes: (i) for the first year, an amount equal to Four Thousand Eight Hundred Sixty and No/100 Dollars (\$4,860.00) times the actual MW_{AC} capacity of the Project Facility (the "Per MW_{AC} Charge") and (ii) for each subsequent year, an amount equal to the immediate prior Per MW_{AC} Charge increased by two percent (2%) per MW_{AC}; provided that the Project Facility shall be subject to taxation by the Taxing Entities upon the expiration of this Payment in Lieu of Tax Agreement as described in Section 5.01 hereof.

(2) Payments made pursuant to this Payment in Lieu of Tax Agreement are not intended to be in lieu of real property taxes payable with respect to the Land (which shall remain privately taxed) but are made in lieu of any increase in taxes resulting from the installation, construction or operation of the Project Facility.

(D) Additional Payments in Lieu of Taxes. Commencing on the first tax year following the date on which any structural addition shall be made to the Project Facility or any portion thereof or any additional building or other structure shall be constructed on the Land, other than any structural addition,

additional building or structure contemplated in the Plans and Specifications submitted in connection with the Application (such structural additions and additional buildings and other structures being hereinafter referred to as "Additional Facilities") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "Additional Payments") to the County Treasurer with respect to such Additional Facilities, such Additional Payments to be computed separately for each Taxing Entity as follows:

(1) Determine the amount of general taxes and general assessments (hereinafter referred to as the "Additional Normal Tax") which would be payable to each Taxing Entity with respect to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency as follows: (a) multiply the Additional Assessed Value (as hereinafter defined) of such Additional Facilities determined pursuant to Section 2.02(E) of this Payment in Lieu of Tax Agreement by (b) the tax rate or rates of such Taxing Entity that would be applicable to such Additional Facilities if such Additional Facilities were owned by the Company and not the Agency, and (c) reduce the amount so determined by the amounts of any tax exemptions that would be afforded to the Company by such Taxing Entity if such Additional Facilities were owned by the Company and not the Agency.

(2) In each fiscal tax year during the term of this Payment in Lieu of Tax Agreement (commencing in the fiscal tax year when such Additional Facilities would first appear on the assessment roll of any Taxing Entity) if such Additional Facilities were owned by the Company and not the Agency, the amount payable by the Company to the County Treasurer on behalf of each Taxing Entity as a payment in lieu of property tax with respect to such Additional Facilities pursuant to this Payment in Lieu of Tax Agreement shall be an amount equal to one hundred percent (100%) of the Additional Normal Tax due each Taxing Entity with respect to such Additional Facilities for such fiscal tax year (unless the Agency and the Company shall enter into a separate written agreement regarding payments in lieu of property taxes with respect to such Additional Facilities, in which case the provisions of such separate written agreement shall control).

(E) Valuation of Additional Facilities for Determining Additional Payments in Lieu of Taxes.

(1) The value of any Additional Facilities for purposes of determining Additional Payments due pursuant to Section 2.02(D) of this Payment in Lieu of Tax Agreement shall be determined by the Assessors of each respective Taxing Entity. The parties hereto agree that the Assessors shall (a) appraise the Additional Facilities in the same manner as other similar properties in the general area of the Project Facility, and (b) place a value for assessment purposes (hereinafter referred to as the "Additional Assessed Value") upon the Additional Facilities, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial establishment of such Additional Assessed Value and of any change in such Additional Assessed Value.

(2) If the Company is dissatisfied with the amount of the Additional Assessed Value of the Additional Facilities as initially established or as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Additional Assessed Value, or of a change in such Additional Assessed Value, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Additional Assessed Value of the Additional Facilities for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then such Assessor, the Company and the Agency shall each select one arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall be a qualified real estate appraiser, experienced in valuation for the purposes of tax assessment in the general area of the Project Facility, which arbitrators shall, at

the sole cost and expense of the Company, determine whether the Additional Assessed Value of the Additional Facilities has been properly established by the Assessor. It is understood that the arbitrators are empowered to confirm the Additional Assessed Value or to determine a lower Additional Assessed Value. Any payments in lieu of taxes due upon such Additional Facilities pursuant to Section 2.02(D) hereof may not be withheld by the Company pending determination of the Additional Assessed Value by the arbitrators.

(F) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "Tax Billing Officer") and a request that said Tax Billing Officers submit to the Company periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(G) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments.

(H) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

(I) Company Annual Reporting.

(1) On the last business day of each calendar year during the term of this Payment in Lieu of Tax Agreement, the Company shall deliver to the Agency an affidavit executed by an authorized representative of the Company certifying to the megawatts of installed solar capacity of the Facility.

(2) The Affected Tax Jurisdictions and the Agency shall have the right to perform an independent audit of the megawatts of installed capacity of the Facility and, if the audit reveals a different solar capacity than that certified to by an independent auditor of the Company, then the Company shall pay to the Affected Tax Jurisdictions or the Agency the reasonable costs incurred by the Affected Tax Jurisdictions or the Agency and their independent auditor, together with a penalty to be determined by the Agency, in its sole discretion.

SECTION 2.03. CREDIT FOR TAXES PAID. (A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Lease Agreement. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have

so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(E) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

SECTION 2.04. LATE PAYMENTS. (A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

ARTICLE III

LIMITED OBLIGATION

SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY. (A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Yates County, New York, and neither the State of New York nor Yates County, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Lease Agreement).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

ARTICLE IV

EVENTS OF DEFAULT

SECTION 4.01. EVENTS OF DEFAULT. Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "Event of Default" or "default" shall mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default; or

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default.

SECTION 4.02. REMEDIES ON DEFAULT. (A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

SECTION 4.04. REMEDIES; WAIVER AND NOTICE. (A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

ARTICLE V

MISCELLANEOUS

SECTION 5.01. TERM. (A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) December 31, 2049 or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article X or Article XI of the Lease Agreement.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

SECTION 5.02. FORM OF PAYMENTS. The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

SECTION 5.03. COMPANY ACTS. Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

SECTION 5.04. AMENDMENTS. This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

SECTION 5.05. NOTICES. (A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

Middlesex-Yates Solar, LLC
601 13th Street NW, Suite 450 South
Washington, D.C. 20005
Attention: Jeffrey Weiss, Co-Manager

WITH A COPY TO:

Hancock Estabrook, LLP
1500 AXA Tower I - 100 Madison Street
Syracuse, New York 13202
Attention: Richard W. Cook, Esq.

IF TO THE AGENCY:

Yates County Industrial Development Agency
One Keuka Business Park
Suite 104
Penn Yan, New York 14527
Attention: Chairman

WITH A COPY TO:

Hodgson Russ LLP
677 Broadway, Suite 301
Albany, New York 12207
Attention: A. Joseph Scott, III, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

SECTION 5.06. BINDING EFFECT. This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

SECTION 5.07. SEVERABILITY. If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

SECTION 5.08. COUNTERPARTS. This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 5.09. APPLICABLE LAW. This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

YATES COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY: *Gene Pucci*
(Vice) Chairman

MIDDLESEX-YATES SOLAR, LLC

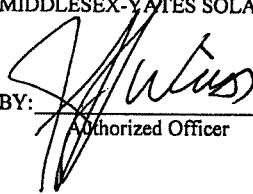
BY: _____
Authorized Officer

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

YATES COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

BY: _____
(Vice) Chairman

MIDDLESEX-YATES SOLAR, LLC

BY:  _____
Authorized Officer

STATE OF NEW YORK)
)ss:
COUNTY OF YATES)

On the 1st day of June, in the year 2018, before me, the undersigned, personally appeared GENE PIERCE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Doreen J. Jensen
Notary Public

Doreen J. Jensen
Notary Public, State of New York
Qualified in Yates County
No. 01JE6199490
My Commission Expires 01/13/2021

DISTRICT OF COLUMBIA)
)ss:

On the 1st day of June, in the year 2018, before me, the undersigned, personally appeared JEFFREY WEISS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

MARY CLAIRE BOUCHER
NOTARY PUBLIC
DISTRICT OF COLUMBIA
My Commission Expires Sept. 30, 2020

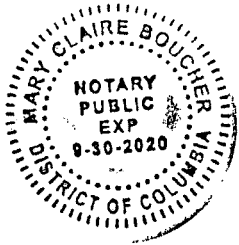


EXHIBIT A

DESCRIPTION OF THE LEASED LAND

Parcel A

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Middlesex, County of Yates, State of New York, being bounded and described as follows:

BEGINNING at a point in the present centerline of Town Line Road, said point being located approximately 1,700' easterly of the present centerline intersection with Lindsley Road;

RUNNING THENCE South 88° 57' 26" East along the present centerline of Town Line Road for a distance of 699.09' to a point;

RUNNING THENCE South 00° 00' 00" East passing through an iron pin set in the South line of Town Line Road and continuing for a total distance of 416.72' to an iron pin set;

RUNNING THENCE North 90° 00' 00" West for a distance of 334.99' to an iron pin set;

RUNNING THENCE South 00° 00' 00" East for a distance of 476.88' to an iron pin set;

RUNNING THENCE North 90° 00' 00" East for a distance of 736.95' to an iron pin set;

RUNNING THENCE South 00° 03' 13" West for a distance of 953.45' to an iron pin set;

RUNNING THENCE North 89° 55' 33" West for a distance of 847.29' to an iron pin set;

RUNNING THENCE North 00° 20' 24" East passing through a wood post found at a distance of 297.83' and continuing for a total distance of 1,467.34' to a wood post found;

RUNNING THENCE North 87° 58' 03" West for a distance of 267.34' to a point;

RUNNING THENCE North 00° 51' 21" East passing through an iron pin found at a distance of 357.04' and continuing for a total distance of 381.91' to the point and place of beginning.

Said parcel having an area of 25.783 acres net to the road right of way.

SUBJECT TO covenants, restrictions, easements and encumbrances of record.

For a more particular description thereof, reference is hereby made to a survey map entitled "ALTA/NSPS Survey Map Showing Lot Line Adjustment for Lands of Jeannette L. Daum, Located on Town Line Road, Town of Middlesex, Yates County, New York" dated 2/9/2017 amended 7/19/2017, prepared by T.G. Miller, P.C., Engineers and Surveyors, Ithaca, New York, filed concurrently herewith and incorporated herein by reference.

A-1

012402.00069 Business 16917663v6

C-26

012402.00069 Business 16919543v6

Parcel B

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Middlesex, County of Yates, State of New York, being bounded and described as follows:

BEGINNING at a point in the present centerline of Town Line Road, said point being located approximately 2,399.09' easterly of the present centerline intersection with Lindsley Road;

RUNNING THENCE South 00° 00' 00" East passing through an iron pin set in the South line of Town Line Road and continuing for a total distance of 416.72' to an iron pin set;

RUNNING THENCE North 90° 00' 00" West for a distance of 334.99' to an iron pin set;

RUNNING THENCE South 00° 00' 00" East for a distance of 476.88' to an iron pin set;

RUNNING THENCE North 90° 00' 00" East for a distance of 736.95' to an iron pin set;

RUNNING THENCE North 00° 03' 13" East passing through an iron pin set at a distance of 869.35 and continuing for a total distance of 895.60' to point;

RUNNING THENCE South 89° 30' 31" West along the present centerline of Town Line Road for a distance of 348.48' to the point and place of beginning.

Said parcel having an area of 11.696 acres net to the road right of way.

SUBJECT TO covenants, restrictions, easements and encumbrances of record.

For a more particular description thereof, reference is hereby made to a survey map entitled "ALTA/NSPS Survey Map Showing Lot Line Adjustment for Lands of Jeannette L. Daum, Located on Town Line Road, Town of Middlesex, Yates County, New York" dated 2/9/2017 amended 7/19/2017, prepared by T.G. Miller, P.C., Engineers and Surveyors, Ithaca, New York, filed concurrently herewith and incorporated herein by reference.

SCHEDULE D
COPY OF APPLICATION
- SEE ATTACHED -



Application for Financial Assistance

A) Applicant Information:

Applicant Name: SUN8 PDC LLC

Applicant Address: c/o Distributed Sun, 601 13th Street NW, Suite 450 South, Washington DC 20005

Phone: (978) 319-0683

Fax: 202-559-6060

Website: www.distributedsun.com

E-mail: Bharath@distributedsun.com

Federal ID#: 81-3783195

NAICS: 221114

State and Year of Incorporation/Organization: 8/8/2016

Will a Real Estate Holding Company be utilized to own the Project property/facility? Yes or No

What is the name of the Real Estate Holding Company: _____

Federal ID#: _____

State and Year of Incorporation/Organization: _____

B) Individual Completing Application:

Name: Bharath Srinivasan

Title: Senior Vice President of Operations

Address: 601, 13th Street, NW, Suite 450 South, Washington DC 20005

Phone: 978-319-0683

Fax: 202-559-6060

E-Mail: bharath@distributedsun.com

C) Company Contact (if different from individual completing application):

Name: _____

Title: _____

Address: _____

Phone: _____ Fax: _____

E-Mail: _____

D) Company Counsel:

Name of Attorney: Mariette Geldenhuys

Firm Name: Mariette Geldenhuys, Attorney At Law

Address: Gateway Center Suite STE #306, 401 East State/MLK, Jr. Street, Ithaca, NY 14850

Phone: (607) 273-2272

Fax: (607) 273-4726

E-mail: mariette@geldenhuyslaw.com

E) **Business Organization (check appropriate category):**

Corporation Partnership
Public Corporation Joint Venture
Sole Proprietorship Limited Liability Company
Other (please specify) _____
Year Established: August 16th, 2016
State in which Organization is established: Delaware (DE)

F) **List all stockholders, members, or partners with % of ownership greater than 20%:**

<u>Name</u>	<u>% of ownership</u>
<u>SUNEIGHT HOLDCO, LLC</u>	<u>100%</u>
_____	_____

G) **Applicant Business Description:**

Describe in detail company background, products, customers, goods and services. Description is critical in determining eligibility:
SUN8 PDC LLC is a subsidiary of Distributed Sun LLC, formed specifically for the development, construction and operation of a New York-based community solar project portfolio. Community solar projects provide savings to electricity consumers via energy bill credits. Distributed Sun is an integrated finance and development solar company - formed in 2009, we are primarily focused on building and owning commercial solar projects. We also own and operate solar assets in 9 different states, including NY. SUN8 is offering residential customers within the NYSEG and National Grid service territory the opportunity to buy clean energy from our solar projects, without the need to build or own a solar facility on their roof or property, on a pay-as-you-go basis without any upfront investment.

Estimated % of sales within County/City/Town/Village: 10% of customers are estimated to be within Yates County.
Estimated % of sales outside County/City/Town/Village, but within New York State: *The remaining 90% of sales will be located within New York State and within the 10 other counties that are both within NYSEG territory and NYISO Load Zone C (These counties include all or portions of Allegany, Steuben, Schuyler, Seneca, Ontario, Cayuga, Tompkins, Chemung, Tioga and Broome.)*
Estimated % of sales outside New York State, but within the U.S.: 0%
Estimated % of sales outside the U.S.: 0%
(*Percentage to equal 100%)

H) Estimated percentage of your total annual supplies, raw materials and vendor services are purchased from firms within County/City/Town Village: *\$100,000 during construction. During operations: services of \$15,000 year for 30 years. SUN8 expects to spend nearly \$2M in labor expense with NY-based labor principally sourced from the local region.*

Section II: Project Description & Details

A) Physical Project Location:

4450 Town Line Road, Middlesex, NY, 14544 (the address may point to a location in the neighboring county; project site is on the southern side of Town Line Rd and is in Yates county)

B) Detailed Description of Project (new build, renovations, and/or equipment purchases). Identify specific uses occurring within the project. Describe any and all tenants and any/all end users (This information is critical in determining project eligibility):

The purpose of the 3.7 MWac community solar projects is to generate clean electricity to be sold to residential and commercial customers. SUN8 PDC LLC has leased land from Jeanette Daum, and plans to lease more than 20 acres for this purpose. These projects would generate enough electricity to power the equivalent of more than 800 average New York homes. Trees will be cleared, where needed, to remove shading. PV modules will be installed on metal racks resting on a foundation of steel earth screws (no concrete for foundations). Two concrete pads of approximately 15' by 20' in size (for the installation of electric equipment to connect to the utility), an eight-foot tall fence with gates, and internal project roads will also be installed.

The project is enabled by the New York Public Service Commission's ruling on Community Distributed Generation and helps the State to achieve the Reforming the Energy Vision goal of 50% clean energy by 2030. The SUN8 projects will offer cheaper, cleaner energy to electricity consumers, creating financial savings (usually 10% discount on their bills). Residential consumers will be able to realize those financial savings and utilize the clean energy generated by the solar projects. Solar projects pay for grid upgrades as a part of the NYSEG's costs to provide service. These costs for upgrades when paid by the projects are removed from the rate-payers burden. The solar projects will also generate clean energy, displacing fossil fuels preserving the environment for future generations. That clean energy will be used by residential customers. By displacing fossil fuel generation, these projects are reducing the environmental burden for future generation and providing more clean air and a healthier environment for New York State residents.

C) Please confirm by checking the box, below, if there is likelihood that the Project would not be undertaken but for the Financial Assistance provided by the Agency? Yes or No

If the Project could be undertaken without Financial Assistance provided by the Agency, then provide a statement in the space provided below indicating why the Project should be undertaken by the Agency:

The project requires a predictable return on investment (excluding market-based risks) to go forward. If the FLEDC does not provide a 30-year PILOT, the project may be subject to full assessment by tax assessors in later years, undermining the financial stability of the project. By providing the PILOT, the local taxing jurisdictions also get the benefit of receiving predictable property tax revenue over the life of the project. A proposed PILOT payment schedule is attached in Attachment A.

If the Applicant is unable to obtain Financial Assistance for the Project, what will be the impact on the Applicant and County/City/Town/Village?

- In the absence of the PILOT agreement, the project cannot be built. Local taxing jurisdiction will miss the opportunity to receive an increase in property taxes over the existing use of the lands.*
- If the project is not built, consumers will not be offered cheaper & cleaner electricity, missing out on financial savings (usually a 10% discount on their bills).*
- Solar projects pay for grid upgrades as a part of the NYSEG's costs to provide service. These costs, paid by the project, are removed from the rate-payers burden. If the projects are not built, those upgrade costs could be charged to rate-payers overtime when upgrades .*
- Solar projects generate clean electricity, displacing generation from fossil fuel sources. If the project is not constructed, the continued use of fossil fuels will significantly add to the environmental burden – to be borne by future generations.*

D) Current Assessed Value of Property \$55,500 (land only); solar array needs to develop an assessed value.

Property Tax ID# 3.01-1-4 (land; a new phantom tax ID will be created for the project separately)
(not required if project is for equipment purchases only)

Are utilities on Site: Water _____ Electric Yes
 Gas _____ Sanitary/Storm Sewer _____

E) Present legal owner of site Jeanette Daum

If other than Applicant by what means will the site be acquired for this Project: ***Property is under site control through a twenty-five year lease with two five-year extensions at the option of SUN8 PDC LLC. SUN8 PDC LLC will be responsible for all costs of development, construction, operation and removal of the solar arrays on the property, including any property taxes attributed to the solar arrays, but excluding the property taxes associated with the land itself.***

F) Zoning of Project Site: Current: AR - Agricultural Proposed: No change

Are any variances Needed: ***Yes. Variances will need to be authorized by ZBA for purpose of installing a fence and a gravel access road across property lines and setbacks between two parcels to be subdivided. An application has been submitted to the ZBA.***

Principal Use of Project upon completion: ***Electricity generation using solar power to supply residential customers.***

G) Will the Project result in the removal of a facility of the Applicant from one area of the State of New York to another?

Yes or No

Will the Project result in the removal of a facility of another proposed occupant of the Project from one area of the State of New York to another area of the State of New York? Yes or No

Will the Project result in the abandonment of one or more facilities located in the State of New York? Yes or No

If the answer to any of the questions in G were yes, indicate whether any of the following apply to the Project:

1. Is the Project reasonably necessary to preserve the competitive position of the Company or such Project Occupant in its industry? Yes or No If yes, please provide detail:

2. Is the Project reasonably necessary to discourage the Company or such Project Occupant from removing such other plant or facility to a location outside the State of New York? Yes or No If yes, please provide detail:

H) **Estimated costs in connection with Project:**

- | | |
|---|--|
| 1. Land and/or Building Acquisition:
<u>22.6</u> acres _____ square feet | \$ <u>N/A</u> |
| 2. New Building Construction: <u>N/A</u> square feet | \$ <u>N/A</u> |
| 3. New Building Addition(s): <u>N/A</u> square feet | \$ <u>N/A</u> |
| 4. Infrastructure Work | \$ <u>N/A</u> |
| 5. Reconstruction/Renovation: <u>N/A</u> square feet | \$ <u>N/A</u> |
| 6. Manufacturing Equipment: | <u>\$ 3,266,175 (all materials & equipment)</u> |
| 7. Non-Manufacturing Equipment (furniture, fixtures, etc.): | \$ <u>N/A</u> |
| 8. Soft Costs: (professional services, etc.): | <u>\$ 693,750 (engineering & design)</u> |
| 9. Other, Specify: <u>Labor Costs and Sales Tax</u> | <u>\$ 2,535,698</u> |

TOTAL Capital Costs: **\$ 6,495,693**

Project refinancing; estimated amount
(for refinancing of existing debt only)

\$ N/A

I) **Sources of Funds for Project Costs:**

- | | |
|---|----------------------------|
| Bank Financing: | \$ <u>0</u> |
| Equity (excluding equity that is attributed to grants/tax credits) | <u>\$ 6,495,693</u> |
| Tax Exempt Bond Issuance (if applicable) | \$ <u>N/A</u> |
| Taxable Bond Issuance (if applicable) | \$ <u>N/A</u> |
| Public Sources (Include sum total of all state and federal grants and tax credits)
<u>(First milestone payment from NYSERDA is received after commercial operation, but the construction costs are funded through equity)</u> | <u>\$ 390,889</u> |
| Identify each state and federal grant/credit: | |
| <u>NYSERDA MW Block Program</u> | <u>\$ 390,889</u> |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| Total Sources of Funds for Project Costs: | \$ _____ |

Have any of the above costs been paid or incurred as of the date of this Application? Yes or No

If Yes, describe particulars: *Costs for project development, site investigations, environmental reviews & engineering to seek subdivision, site plan approval and special use permit from the Town of Middlesex = \$50,000. Additionally, a payment of \$137,500 was made to the local distribution utility (NYSEG), per NY PSC regulations to maintain the project's position on the interconnection queue with NYSEG.*

Mortgage Recording Tax Exemption Benefit: Amount of mortgage that would be subject to mortgage recording tax:

Mortgage Amount (include sum total of construction/permanent/bridge financing): \$ N/A

Estimated Mortgage Recording Tax Exemption Benefit (product of Mortgage Amount as indicated above multiplied by 1%): \$ N/A

Sales and Use Tax: Gross amount of costs for goods and services that are subject to State and local Sales and Use tax - said amount to benefit from the Agency's Sales and Use Tax exemption benefit:

\$ 3,266,175

Estimated State and local Sales and Use Tax Benefit (product of 8% multiplied by the figure, above):

\$ 261,294

(Applicant's Note: The NYS portion of the Sales and Use Tax (4%) has been exempted for Solar Projects and therefore would not need to be abated. SUN8 requests an abatement of the Yates County portion of the Sales and Use Taxes)

*** Note that the estimate provided above will be provided to the New York State Department of Taxation and Finance. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to undertake the total amount of investment as proposed within this Application, and that the estimate, above, represents the maximum amount of sales and use tax benefit that the Agency may authorize with respect to this Application. The Agency may utilize the estimate, above, as well as the proposed total Project Costs as contained within this Application, to determine the Financial Assistance that will be offered.*

Real Property Tax Benefit:

IDA PILOT Benefit: Agency staff will indicate the amount of PILOT Benefit based on estimated Project Costs as contained herein and anticipated tax rates and assessed valuation, including the annual PILOT Benefit abatement amount for each year of the PILOT benefit year and the sum total of PILOT Benefit abatement amount for the term of the PILOT as depicted in Section II(I) of the Application.

Percentage of Project Costs financed from Public Sector sources: Agency staff will calculate the percentage of Project Costs financed from Public Sector sources based upon Sources of Funds for Project Costs as depicted above in Section II(I) of the Application.

J) What is your project timetable (Provide dates):

1. Start date: acquisition of equipment or construction of facilities: 5/31/2017

2. Estimated completion date of project: 11/30/2017

3. Project occupancy – estimated starting date of operations: 12/31/2017

4. Have construction contracts been signed? Yes or No

5. Has Financing been finalized? Yes or No

*** If constructions contracts have been signed, please provide copies of executed construction contracts and a complete project budget. The complete project budget should include all related construction costs totaling the amount of the new building construction, and/or new building addition(s), and/or renovation.*

Employment Plan (Specific to the proposed project location):

	Current # of jobs at proposed project location or to be relocated to project location	IF FINANCIAL ASSISTANCE IS GRANTED – project the number of FTE and PTE jobs to be RETAINED	IF FINANCIAL ASSISTANCE IS GRANTED – project the number of FTE and PTE jobs to be CREATED upon THREE Years after Project completion	Estimate number of residents of the Labor Market Area in which the Project is located that will fill the FTE and PTE jobs to be created upon THREE Years after Project Completion **
Full time (FTE)	N/A	N/A	N/A	N/A
Part Time (PTE)	N/A	N/A	N/A	N/A
Total	N/A	N/A	N/A	N/A

** For purposes of this question, please estimate the number of FTE and PTE jobs that will be filled, as indicated in the third column, by residents of the Labor Market Area, in the fourth column. The Labor Market Area includes Yates, Seneca, Ontario, Monroe, Wayne, Livingston, Orleans, Genesee, Wyoming (or six other contiguous counties, including Steuben County, chosen at the Agency's discretion).

K) How many construction jobs will be created:

From data extrapolated from past projects, we expect to expend the following man hours for this proposed project:

Civil, mechanical & storm water control and fencing – 9,000 hours
Electrical – 20,000 hours
Project management & administrative – 3,000 hours
Engineering – 500 hours

Total – 37,000 hours

This is the equivalent of 70 jobs for 6 months (13 weeks) during construction, or the equivalent of 18.5 job-years (40 hours/week, 50 weeks/year).

Category of Jobs to be Retained and Created	Number of Jobs Retained	Number of Jobs Created over next three years	Average Salary or Range of Salary	Average Fringe Benefits or Range of Fringe Benefits
Management	N/A	N/A		
Professional	N/A	N/A		
Administrative	N/A	N/A		
Production	N/A	N/A		
Independent Contractor	N/A	N/A		
Other	N/A	N/A		

L) Salary and Fringe Benefits for Jobs to be Retained and/or Created:

M) Employment at other locations in County/City/Town/Village: (provide address and number of employees at each location):

	Address	Address	Address
Full time	N/A		
Part Time	N/A		
Total	N/A		

N) Will any of the facilities described above be closed or subject to reduced activity? Yes or No

** If any of the facilities described above are located within the State of New York, and you answered Yes to the question, above, you must complete Section IV of this Application.

** Please note that the Agency may utilize the foregoing employment projections, among other items, to determine the Financial Assistance that will be offered by the Agency to the Applicant. The Applicant acknowledges that the transaction documents may include a covenant by the Applicant to retain the number of jobs and create the number of jobs with respect to the Project as set forth in this Application.

Section III: Retail Questionnaire

To ensure compliance with Section 862 of the New York General Municipal Law, the Agency requires additional information if the proposed Project is one where customers personally visit the Project site to undertake either a retail sale transaction or to purchase services.

Please answer the following:

A. Will any portion of the project (including that portion of the cost to be financed from equity or other sources) consist of facilities or property that are or will be primarily used in making sales of goods or services to customers who personally visit the project site?

Yes or No. If the answer is yes, please continue. If no, proceed to section IV

For purposes of Question A, the term "retail sales" means (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York (the "Tax Law") primarily engaged in the retail sale of tangible personal property (as defined in Section 1101(b)(4)(i) of the Tax Law), or (ii) sales of a service to customers who personally visit the Project.

B. What percentage of the cost of the Project will be expended on such facilities or property primarily used in making sales of goods or services to customers who personally visit the project? 0.00%. If the answer is less than 33% do not complete the remainder of the retail determination and proceed to section V.

If the answer to A is Yes AND the answer to Question B is greater than 33.33%, indicate which of the following questions below apply to the project:

1. Will the project be operated by a not-for-profit corporation? Yes or No

2. Is the Project location or facility likely to attract a significant number of visitors from outside the economic development region (Rochester / Finger Lakes) in which the project will be located? Yes or No

If yes, please provide a third party market analysis or other documentation supporting your response.

3. Is the predominant purpose of the project to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the municipality within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services? Yes or No

If yes, please provide a third party market analysis or other documentation supporting your response.

4. Will the project preserve permanent, private sector jobs or increase the overall number of permanent, private sector jobs in the State of New York? Yes or No

If yes, explain _____

5. Is the project located in a Highly Distressed Area? Yes or No

Section IV: Inter-Municipal Move Determination

The Agency is required by state law to make a determination that, if completion of a Project benefiting from Agency Financial Assistance results in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, Agency Financial Assistance is required to prevent the project occupant from relocating out of the state, or is reasonably necessary to preserve the project occupant's competitive position in its respective industry.

Will the Project result in the removal of an industrial or manufacturing plant of the Project occupant from one area of the state to another area of the state? Yes or No

Will the Project result in the abandonment of one or more plants or facilities of the Project occupant located within the state? Yes or No

If Yes to either question, explain how, notwithstanding the aforementioned closing or activity reduction, the Agency's Financial Assistance is required to prevent the Project from relocating out of the State, or is reasonably necessary to preserve the Project occupant's competitive position in its respective industry: _____

Does the Project involve relocation or consolidation of a project occupant from another municipality?

Within New York State Yes or No
Within County/City/Town/Village Yes or No

If Yes to either question, please, explain: _____

Section V: Estimate of Real Property Tax Abatement Benefits & Percentage of Project Costs financed from Public Sector sources

**** Section V of this Application will be: (i) completed by IDA Staff based upon information contained within the Application, and (ii) provided to the Applicant for ultimate inclusion as part of this completed Application.**

PILOT Estimate Table Worksheet

Dollar Value of New Construction and Renovation Costs	Estimated New Assessed Value of Property Subject to IDA*	County Tax Rate/1000	Local Tax Rate (Town/City/Village)/1000	School Tax Rate/1000

*Apply equalization rate to value

PILOT Year	% Payment	County PILOT Amount	Local PILOT Amount	School PILOT Amount	Total PILOT	Full Tax Payment w/o PILOT	Net Exemption
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
TOTAL							

*Estimates provided are based on current property tax rates and assessment values

Section VI: Representations, Certifications and Indemnification

**** This Section of the Application can only be completed upon the Applicant receiving, and must be completed after the Applicant receives, IDA Staff confirmation that Section I through Section V of the Application are complete.**

Jeff Weiss (name of CEO or other authorized representative of Applicant) confirms and says that he/she is the *Manager* (title) of SUN8 PDC LLC (name of corporation or other entity) named in the attached Application (the "Applicant"), that he/she has read the foregoing Application and knows the contents thereof, and hereby represents, understands, and otherwise agrees with the Agency and as follows:

- A. Job Listings: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, new employment opportunities created as a result of the Project will be listed with the New York State Department of Labor Community Services Division (the "DOL") and with the administrative entity (collectively with the DOL, the "JTPA Entities") of the service delivery area created by the federal job training partnership act (Public Law 97-300) ("JTPA") in which the Project is located.
- B. First Consideration for Employment: In accordance with Section 858-b(2) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, except as otherwise provided by collective bargaining agreements, where practicable, the Applicant will first consider persons eligible to participate in JTPA programs who shall be referred by the JTPA Entities for new employment opportunities created as a result of the Project.
- C. Annual Sales Tax Filings: In accordance with Section 874(8) of the New York General Municipal Law, the Applicant understands and agrees that, if the Project receives any sales tax exemptions as part of the Financial Assistance from the Agency, in accordance with Section 874(8) of the General Municipal Law, the Applicant agrees to file, or cause to be filed, with the New York State Department of Taxation and Finance, the annual form prescribed by the Department of Taxation and Finance, describing the value of all sales tax exemptions claimed by the Applicant and all consultants or subcontractors retained by the Applicant. Copies of all filings shall be provided to the Agency.
- D. Employment Reports: The Applicant understands and agrees that, if the Project receives any Financial Assistance from the Agency, the Applicant agrees to file, or cause to be filed, with the Agency, at least annually or as otherwise required by the Agency, reports regarding the number of people employed at the project site, salary levels, contractor utilization and such other information (collectively, "Employment Reports") that may be required from time to time on such appropriate forms as designated by the Agency. Failure to provide Employment Reports within 30 days of an Agency request shall be an Event of Default under the PILOT Agreement between the Agency and Applicant and, if applicable, an Event of Default under the Agent Agreement between the Agency and Applicant. In addition, a Notice of Failure to provide the Agency with an Employment Report may be reported to Agency board members, said report being an agenda item subject to the Open Meetings Law.
- E. The Applicant acknowledges that certain environmental representations will be required at closing. The Applicant shall provide with this Representation, Certification and Indemnification Form copies of any known environmental reports, including any existing Phase I Environmental Site Assessment Report(s) and/or Phase II Environmental Investigations. The Agency may require the Company and/or owner of the premises to prepare and submit an environmental assessment and audit report, including but not necessarily limited to, a Phase I Environmental Site Assessment Report and a Phase II Environmental Investigation, with respect to the Premises at the sole cost and expense of the owner and/or the Applicant. All environmental assessment and audit reports shall be completed in accordance with ASTM Standard Practice E1527-05, and shall be conformed over to the Agency so that the Agency is authorized to use and rely on the reports. The Agency, however, does not adopt, ratify, confirm or assume any representation made within reports required herein.

- F. The Applicant and/or the owner, and their successors and assigns, hereby release, defend and indemnify the Agency from any and all suits, causes of action, litigations, damages, losses, liabilities, obligations, penalties, claims, demands, judgments, costs, disbursements, fees or expenses of any kind or nature whatsoever (including, without limitation, attorneys', consultants' and experts' fees) which may at any time be imposed upon, incurred by or asserted or awarded against the Agency, resulting from or arising out of any inquiries and/or environmental assessments, investigations and audits performed on behalf of the Applicant and/or the owner pursuant hereto, including the scope, level of detail, contents or accuracy of any environmental assessment, audit, inspection or investigation report completed hereunder and/or the selection of the environmental consultant, engineer or other qualified person to perform such assessments, investigations, and audits.
- G. **Hold Harmless Provision:** The Applicant acknowledges and agrees that the Applicant shall be and is responsible for all costs of the Agency incurred in connection with any actions required to be taken by the Agency in furtherance of the Application including the Agency's costs of general counsel and/or the Agency's bond/transaction counsel whether or not the Application, the proposed Project it describes, the attendant negotiations, or the issue of bonds or other transaction or agreement are ultimately ever carried to successful conclusion and agrees that the Agency shall not be liable for and agrees to indemnify, defend, and hold the Agency harmless from and against any and all liability arising from or expense incurred by: (i) the Agency's examination and processing of, and action pursuant to or upon, the Application, regardless of whether or not the Application or the proposed Project described herein or the tax exemptions and other assistance requested herein are favorably acted upon by the Agency; (ii) the Agency's acquisition, construction and/or installation of the proposed Project described herein; and (iii) any further action taken by the Agency with respect to the proposed Project including, without limiting the generality of the foregoing, all causes of action and attorney's fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. Applicant hereby understands and agrees, in accordance with Section 875(3) of the New York General Municipal Law and the policies of the Agency that any New York State and local sales and use tax exemption claimed by the Applicant and approved by the Agency, any mortgage recording tax exemption claimed by the Applicant and approved by the Agency, and/or any real property tax abatement claimed by the Applicant and approved by the Agency, in connection with the Project, may be subject to recapture and/or termination by the Agency under such terms and conditions as will be established by the Agency and set forth in transaction documents to be entered into by and between the Agency and the Applicant. The Applicant further represents and warrants that the information contained in this Application, including without limitation information regarding the amount of the New York State and local sales and use tax exemption benefit, the amount of the mortgage recording tax exemption benefit, and the amount of the real property tax abatement, if and as applicable, to the best of the Applicant's knowledge, is true, accurate and complete.
- H. This obligation includes an obligation to submit an Agency Fee Payment to the Agency in accordance with the Agency Fee policy effective as of the date of this Application
- I. By executing and submitting this Application, the Applicant covenants and agrees to pay the following fees to the Agency and the Agency's general counsel and/or the Agency's bond/transaction counsel, the same to be paid at the times indicated:
- (i) a non-refundable \$250 application and publication fee (the "Application Fee");
 - (ii) a \$2,500 expense deposit for the Agency's Counsel Fee.
 - (iii) Unless otherwise agreed to by the Agency, an amount equal to One percent (1%) of the total project costs. The FLEDC will collect its participation fee at the time of closing, based on the capital investment *costs stated in this application*. (Should the actual costs exceed those estimates by more than 25%, an additional fee will apply.)
 - (iv) All fees, costs and expenses incurred by the Agency for (1) legal services, including but not limited to those provided by the Agency's general counsel and/or the Agency's bond/transaction counsel, thus note that the Applicant is entitled to receive a written estimate of fees and costs of the Agency's general counsel and the Agency's bond/transaction counsel; and (2) other consultants retained by the Agency in connection with the proposed project, with all such charges to be paid by the Applicant at the closing.

- J. If the Applicant fails to conclude or consummate the necessary negotiations, or fails, within a reasonable or specified period of time, to take reasonable proper or requested action, or withdraws, abandons, cancels, or neglects the Application, or if the Applicant is unable to find buyers willing to purchase the bond issue requested, or if the Applicant is unable to facilitate the sale/leaseback or lease/leaseback transaction, then, upon the presentation of an invoice, Applicant shall pay to the Agency, its agents, or assigns all actual costs incurred by the Agency in furtherance of the Application, up to that date and time, including but not necessarily limited to, fees of the Agency's general counsel and/or the Agency's bond/transaction counsel.
- K. The Applicant acknowledges and agrees that all payment liabilities to the Agency and the Agency's general counsel and/or the Agency's bond and/or transaction counsel as expressed in Sections H and I are obligations that are not dependent on final documentation of the transaction contemplated by this Application.
- L. The cost incurred by the Agency and paid by the Applicant, the Agency's general counsel and/or bond/transaction counsel fees and the processing fees, may be considered as a cost of the Project and included in the financing of costs of the proposed Project, except as limited by the applicable provisions of the Internal Revenue Code with respect to tax-exempt bond financing.
- M. The Applicant acknowledges that the Agency is subject to New York State's Freedom of Information Law (FOIL). Applicant understands that all Project information and records related to this application are potentially subject to disclosure under FOIL subject to limited statutory exclusions.
- N. The Applicant acknowledges that it has been provided with a copy of the Agency's Policy for Termination of Agency Benefits and Recapture of Agency Benefits Previously Granted (the "Termination and Recapture Policy"). The Applicant covenants and agrees that it fully understands that the Termination and Recapture Policy is applicable to the Project that is the subject of this Application, and that the Agency will implement the Termination and Recapture Policy if and when it is so required to do so. The Applicant further covenants and agrees that its Project is potentially subject to termination of Agency financial assistance and/or recapture of Agency financial assistance so provided and/or previously granted.
- O. The Applicant understands and agrees that the provisions of Section 862(1) of the New York General Municipal Law, as provided below, will not be violated if Financial Assistance is provided for the proposed Project:
- § 862. Restrictions on funds of the agency. (1) No funds of the agency shall be used in respect of any project if the completion thereof would result in the removal of an industrial or manufacturing plant of the project occupant from one area of the state to another area of the state or in the abandonment of one or more plants or facilities of the project occupant located within the state, provided, however, that neither restriction shall apply if the agency shall determine on the basis of the application before it that the project is reasonably necessary to discourage the project occupant from removing such other plant or facility to a location outside the state or is reasonably necessary to preserve the competitive position of the project occupant in its respective industry.
- P. The Applicant confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the proposed Project is in substantial compliance with applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.
- Q. The Applicant confirms and acknowledges 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 exemption claimed by reason of the Agency's involvement the Project.
- R. 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 limited to, the provision of Section 859-a and Section 862(1) of the New York General Municipal Law.
- S. The Applicant and the individual executing this Application on behalf of Applicant acknowledge that the Agency and its counsel will rely on the representations and covenants made in this Application when acting hereon and hereby represents that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.

The Applicant and the individual executing this Application on behalf of the Applicant acknowledge that:

- A) The FLEDC will rely on the representations made herein when acting on this Application and hereby represent that the statements made herein do not contain any untrue statement of a material fact and do not omit to state a material fact necessary to make the statements contained herein not misleading.
- B) Failure of the Applicant to file appropriate Sales Tax and Employment reports will result in the revocation of tax benefits and require repayment of benefits previously claimed.

District of Columbia)

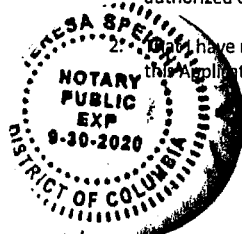
) ss.:

JEFF WETSS

, being first duly sworn, deposes and says:

SUN8 PDC LLC

1. That I am the MUNICIPAL (Corporate Office) of SUN8 PDC LLC (Applicant) and that I am duly authorized on behalf of the Applicant to bind the Applicant.



I, JEFF WETSS, have read the attached Application, I know the contents thereof, and that to the best of my knowledge and belief, the Application and the contents of this Application are true, accurate and complete.

Teresa Speight
(Signature of Officer)
04.17.17
(Date)

Subscribed and affirmed to me under penalties of perjury
this 17 day of Apr, 2017.

Teresa Speight
(Notary Public)

TERESA SPEIGHT
NOTARY PUBLIC
DISTRICT OF COLUMBIA
My Commission Expires Sept. 30, 2020

This Application should be submitted with:

- A) A \$250 Application fee to: Finger Lakes Economic Development Center
One Keuka Business Park
Penn Yan, New York 14527
(Attn: CEO).
- B) A certificate of Insurance as follows:
 1. Worker's Compensation Insurance (FLEDC named as additional insured).
 2. General Liability Insurance with limits not less than \$1,000,000 per occurrence /accident and a blanket excess liability not less than \$3,000,000 (FLEDC named as additional insured).
 3. Insurance against loss/damage by fire, lightning or other casualties with a uniform standard extended coverage endorsement in an amount not less than the full replacement value of the Facility. (FLEDC named as named insured).

The FLEDC encourages the use of Yates County contractors/suppliers and asks that they be allowed to bid your project!

Attachment A: SUN8 PDC LLC Application to Finger Lakes Economic Development Center
Proposed PILOT Payment Schedule

A 30-year PILOT with a payment of \$4,860 per MWac in year one with a 2% increase each year.

Total PILOT payment amounts over 30 years = 729,495

Year	MW	\$/Mwac	Total
1	3.7	\$4,860	\$17,982
2	3.7	\$4,957	\$18,342
3	3.7	\$5,056	\$18,708
4	3.7	\$5,157	\$19,083
5	3.7	\$5,261	\$19,464
6	3.7	\$5,366	\$19,854
7	3.7	\$5,473	\$20,251
8	3.7	\$5,583	\$20,656
9	3.7	\$5,694	\$21,069
10	3.7	\$5,808	\$21,490
11	3.7	\$5,924	\$21,920
12	3.7	\$6,043	\$22,358
13	3.7	\$6,164	\$22,806
14	3.7	\$6,287	\$23,262
15	3.7	\$6,413	\$23,727
16	3.7	\$6,541	\$24,201
17	3.7	\$6,672	\$24,685
18	3.7	\$6,805	\$25,179
19	3.7	\$6,941	\$25,683
20	3.7	\$7,080	\$26,196
21	3.7	\$7,222	\$26,720
22	3.7	\$7,366	\$27,255
23	3.7	\$7,513	\$27,800
24	3.7	\$7,664	\$28,356
25	3.7	\$7,817	\$28,923
26	3.7	\$7,973	\$29,501
27	3.7	\$8,133	\$30,091
28	3.7	\$8,295	\$30,693
29	3.7	\$8,461	\$31,307
30	3.7	\$8,631	\$31,933
Total			\$729,495

SCHEDULE E

FORM OF ANNUAL SALES STATUS REPORT

January __, 20__

Re: New Project Verification

Dear _____:

The Yates County Industrial Development Agency (the "Agency") is currently providing assistance in connection with your project in the Town of Middlesex, Yates County, New York.

The Agency is required to file an annual report with the New York State Comptroller providing information on its activities, and the activities of projects that are assisted by the Agency. In order for the Agency to compile that report, it is necessary that we obtain information relating to assistance provided and benefits derived from all entities that receive such assistance. Failure by the Agency to file the report information required by New York State could result in the Agency losing its ability to provide future assistance or the entity suffering claw-back provisions and forfeiting benefits previously received. Therefore, it is important that this information be provided in an accurate and timely manner.

Attached please find a questionnaire to be completed and returned to the IDA by _____ . If you have any questions regarding the required information, please do not hesitate to call our office.

We appreciate your assistance in this matter. A self-addressed stamped envelope is enclosed for your convenience.

Very truly yours,

Company name and address:

Project Name:

Company contact:

Contact phone number:

(Please-correct any information above)

Financing Information

Has the Agency provided project financing assistance through issuance of a bond or note?

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note at December 31, 20__ _____
- Principal paid during 20__ _____
- Outstanding principal balance of such bond or note at December 31, 20__ _____

Interest rate on mortgage as of December 31, 20__ _____

Final maturity date of the bond or note _____

Is the Company a not-for-profit? _____

Sales Tax Abatement Information

Did your company receive Sales Tax Abatement on your Project during 20__?

Yes No

If so, please provide the amount of sales tax savings received for each year _____

(A copy of the ST-340 sales tax report submitted to New York State for the reporting period is required to be attached with this report)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during 20__?

Yes No

The amount of the mortgage recording tax that was abated during 20__ : _____

Job Information

Number of full time equivalent employees (“FTE”) existing jobs by category **before IDA status:**

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Employees of Independent Contractors					

Current number of FTE employees for 20__ by category:

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Employees of Independent Contractors					

Number of FTE jobs **created** during 20__ as a result of the assistance received through the IDA by category:

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Employees of Independent Contractors					

Number of FTE jobs **retained** during 20__ by category:

	Professional	Skilled	Semi-Skilled	Un-Skilled	Total
Full Time					
Part Time					
Seasonal					
Independent Contractors					
Employees of Independent Contractors					

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created an internal report verifying the total jobs by employment category as outlined above at the location is required with this submission.

Number of FTE construction jobs created during 20__ _____

Number of FTE construction jobs during 20__ _____

Salary and Fringe Benefits

Is the salary and fringe benefit averages or ranges for categories of jobs retained and jobs created described in the Application still complete, true, and accurate: Yes No

If not, please provide the revised amounts using the table 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 Finger Lakes Economic Development Region ¹				

¹ The Finger Lakes Economic Development Region consists of the following counties: Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates.

Capital Investment Information

20__ Capital Investment	_____
Real Estate	_____
Construction	_____
Machinery and Equipment	_____
Other Taxable Expenses	_____
Other Non-Taxable Expenses	_____
Total Capital Investment	_____

Officer's Certification

I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of the Uniform Agency Project Agreement dated as of June 1, 2018 by and between the Company and Yates County Industrial Development Agency (the "Project Agreement"), including but not limited to the suspension, discontinuance, and potential claw back of financial assistance provided for the project.

Signed: _____
(Authorized Company Representative)

Date: _____