

GROUND LEASE

This Ground Lease (the "Lease") is made and entered into as of **XX, 20XX** (the "Effective Date"), by and between Fishers Island Waste Management District (the "Landlord") and **Developer**, (the "Tenant").

WHEREAS, Landlord owns approximately 18.58 acres of real property located at Wilderness Road (Parcel ID: 12.-2-6.13), Southold, New York, as more particularly described in Appendix A attached hereto (the "Property");

WHEREAS, Tenant wishes to conduct diligence with respect to developing, designing, installing and operating a solar-powered electric generation facility and energy storage and distribution system on the portion of the Property described in Appendix B attached hereto, such portion of the Property being referred to herein as tile "Lease Area";

WHEREAS, Landlord is willing to lease the Lease Area to Tenant, and Tenant is willing to lease the Lease Area from Landlord for the development, construction, operation, and maintenance of a solar-powered electric generation facility and associated uses necessary or ancillary thereto;

WHEREAS, Tenant desires and Landlord is willing to grant Tenant certain easements across the Property which easements are necessary for the development, construction, operation and maintenance of a solar-powered electric generation facility on the Lease Area;

NOW THEREFORE, in consideration of the premises, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

SECTION 1. DEFINITIONS. Capitalized terms within this Lease shall have the meanings as set forth in the Glossary of Terms attached hereto and incorporated herein.

SECTION 2. LEASE. Landlord hereby leases the Lease Area to Tenant and Tenant leases the Lease Area from Landlord for the Permitted Uses for the Term. After the Development Period, Tenant shall have quiet and peaceful possession of the Lease Area for the entire Term without hindrance, interruption, or interference by Landlord or any other person or entity claiming through or under Landlord.

SECTION 3. GRANT OF EASEMENTS.

(a) Landlord hereby grants the following easements (the "Easements") to Tenant for the following purposes, across the portions of the Property identified in Appendix C (the "Easement Parcels")

(i) A non-exclusive right of pedestrian, vehicular and equipment access to the Facility across or through the Property at all times, which is necessary or convenient for ingress and egress to the Facility including over the now existing

or hereafter constructed roads, lanes, and rights of way on the Property, and such additional roads as Tenant or anyone else may construct (including rights to maintain, improve, rebuild, relocate or widen the roads) from time to time on any portion of the Property approved by Landlord (which approval shall not be unreasonably withheld, conditioned or delayed), in each case for the benefit of the Facility.

(ii) an exclusive right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient, above or below ground, to interconnect the Facility to the electrical distribution system, the location of which will be determined by the local electric distribution company; and

(iii) an exclusive easement, if needed, of no greater size than reasonably necessary to be located at a mutually acceptable location on the Property for temporary construction laydown, and other areas and access rights reasonably necessary to construct, erect, install, expand, modify or remove the Facility. Upon completion of each construction phase, said easement shall terminate. This easement will run from the Operations Period Commencement Date until the Commercial Operation Date and during the Decommissioning Period of the lease term.

(iv) An exclusive right and easement to use, capture, convert, and maintain uninterrupted free and unobstructed access to solar energy over and across the Property.

(v) To the extent that Landlord holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property (the "landlord Easements") on the date of this Agreement, and such Landlord Easement are being used or could be used for the benefit of the Property or Facility, then the Landlord Easements are hereby included in this Agreement, and Tenant shall be entitled to make full use of the Landlord Easements, if such use is permitted under the Landlord Easements. Upon the request of Tenant at any time and from time to time, Landlord shall grant to Tenant (in recordable form and containing such terms and provisions as may reasonably be requested by Tenant, one or more sub easements of the Landlord Easements and the sub easements shall terminate upon the expiration or termination of this Agreement. However, any and all utilization of the same shall be at the sole cost and expense of the Tenant.

(b) Landlord's grant of Easements in Sections (3)(a) shall commence on the Effective Date and end upon termination of the Decommissioning Period.

SECTION 4. TERM.

(a) This Lease will consist of a Development Period, an Operations Period, and a Decommissioning Period.

(i) The Development Period will begin on the Effective Date and will terminate on the earliest of:

(A) Delivery by Tenant of notice of termination in accordance with Section 4(b);

(B) Two (2) years after the commencement of the Development Period, provided that Tenant shall have the right to extend such time for up to two (2) additional periods of six (6) months each, contingent upon Tenant providing evidence that it continues to pursue the development, financing and construction of a solar-powered electric generation project on the Lease Area, and such right to be exercised by Tenant by delivering notice to Landlord at least thirty (30) days prior to the commencement of such additional period; or

(C) the Operations Period Commencement Date.

(ii) The Operations Period will commence at 12:01 a.m. on the date, notified by Tenant to Landlord no fewer than ten (10) days in advance, on which Tenant intends to commence construction-related activities at, or will otherwise take control over, the Lease Area (such date being referred to herein as the Operations Period Commencement Date) and will end at 11:59 p.m. on the last day of the month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs. Tenant shall have the right to extend the Operations Period for two (2) periods of five (5) years each. At least ninety (90) days prior to the beginning of an extension term, Tenant shall deliver notice to Landlord of Tenant's intent to exercise the extension option, and Tenant and Landlord, at Tenant's expense, shall prepare and record any amendments to the Notice of Lease and/or any other documents necessary to evidence and give effect to the extension.

(iii) The Decommissioning Period shall commence on the expiration of the Operations Period (including any extension thereof), and shall continue until the completion of decommissioning activities, which shall not exceed 180 days.

(b) At any time during the Development Period, including any extensions thereof provided herein, Tenant may elect, in Tenant's sole discretion, to terminate this Lease upon seven (7) days' notice to Landlord. For the avoidance of doubt, upon any such termination, no further Rent payments shall become due.

SECTION 5. TENANT'S USE OF THE LEASE AREA. Tenant may use the Lease Area for Permitted Uses, subject to limitations set forth below:

- (a) During the Development Period, Tenant:
 - (i) may determine the Facility size and the specific location of the Lease Area and of the Easement Parcels by means of one or more survey(s), and such surveys shall then define the Lease Area and the Easement Parcels and shall be an amendment to this Lease as a revised Appendix B and Appendix C; and
 - (ii) may use the Lease Area for development work and tests including determining potential solar energy power production on the Property, including studies of sunlight concentration and other meteorological data, extracting soil samples, conducting wildlife and other environmental studies and conducting transmission feasibility studies.

For the avoidance of doubt, during the Development Period, Tenant shall not have control over the Lease Area and must obtain Landlord's prior permission (which may not be unreasonably withheld) to enter the Lease Area and undertake the activities described above.

- (b) During the Operations Period, Tenant may use the Lease Area for any of the Permitted Uses.
- (c) During the Decommissioning Period, Tenant shall cease commercial operation of the Facility, and shall (x) remove all structures, equipment, foundations, security barriers and transmission lines, and all underground foundations, supports, pilings, cables, conduits and other facilities from the Lease Area and dispose of all materials contained in the Facility in accordance with Applicable Law; and (y) otherwise return the Property to its condition as of the beginning of the Operations Period (ordinary wear and tear excluded) except that the Parties agree that Tenant will not be responsible for replacement of any trees or shrubbery and, further, in the event a roadway or other ingress/egress is constructed, the Tenant is not responsible for removing any constructed access way. This Section 5(c) shall survive any termination of this Agreement.

SECTION 6. CONSTRUCTION OF THE FACILITY.

- (a) Tenant may construct the Facility as Tenant, in its sole discretion, may determine, provided, however, that such construction shall comply with Applicable Law. Landlord consents to Tenant's location of the Facility or related facilities or equipment at any location in the Lease Area, including at or near property boundary lines.
- (b) Tenant shall give Landlord regular updates on the progress of installing the Facility. After Tenant has determined, in its reasonable judgment, that the Facility has been installed in accordance with all Applicable Laws and is capable of producing electricity on a continuous basis while exposed to sunlight, Tenant shall notify Landlord that installation of the Facility is complete and shall specify the Commercial Operation Date for the Facility.
- (c) Tenant may remove such trees and other vegetation or obstructions, as necessary on the Property to obtain solar access to the Facility.

SECTION 7. LANDLORD ACTIVITIES.

- (a) The parties acknowledge that since this Lease Area is a regulated, capped landfill, Landlord is required by law to monitor and/or maintain the Lease Area pursuant to the Applicable NYS DEC Landfill Closure Plan ("Plan"). Thus, so far as between the Parties, Tenant shall, at its sole cost and expense, maintain and operate the System which shall not penetrate the cap of the landfill. Landlord shall continue to maintain and operate the landfill as per Plan requirements. Tenant shall maintain the ground cover, including regular mowing of vegetation consistent with the operation requirements of a photovoltaic system. Landlord shall have the right to enter on the premise to maintain and monitor the cap as required, provided that they provide reasonable notice of their entrance.
- (b) Landlord, at its sole cost and expense, shall comply with all Applicable Legal Requirements of the Plan except as to matters resulting wholly or partly by, and to the extent caused by, Tenant or any of its related entities, contractors, invitees or licensees.
- (c) Landlord will continue to have responsibility for all obligations with respect to the Landfill, including maintaining the Landfill and making all repairs and replacements to the Landfill, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, except to the extent of any required as a result of any act, or failure to act, by Tenant or any of its related entities, contractors, invitees or licensees, and except any required in connection with Tenant's activities pursuant to and in accordance with this Agreement.
- (d) Landlord shall not be required to furnish any services or facilities or to make any repairs or alterations to the Property.
- (e) Landlord shall not engage in activities at the Property that will materially impact the topography or soil conditions on the Lease Area or construct any structures or improvements on the Lease Area or Easement Parcels.
- (f) Landlord shall not construct or install, or knowingly permit to be constructed or installed, on any property owned or leased by Landlord any alterations, modifications or improvements to such property which would interfere with or block the access of the Facility to sunlight.
- (g) During the Operations Period and the Decommissioning Period, Landlord shall not enter the Lease Area without Tenant's consent, such consent not to be unreasonably withheld.
- (h) Landlord will maintain existing drainage tiles or waterways in proper condition and, further, will not alter the natural flow of water in a way that impacts the Facility. Moreover, to the extent necessary, Tenant may elect to install, at its cost, drainage systems as necessary for the Facility and, in so doing, upon Notice to Landlord, Tenant

has the permission to tie-in to existing drainage systems in a reasonable manner. Any such tie-in will be completed at Tenant's cost and the Tenant-installed drainage system will be maintained at Tenant's cost. With respect to drainage tiles located on the Property as of the Effective Date. Landlord agrees that Tenant may reroute, at Tenant's sole expense, any drainage tiles which may conflict with locations for Facility foundations or cabling, provided such rerouting does not significantly adversely affect the functionality of the drainage on the Property. Tenant shall bear the cost of having only responsible, and experienced field tile contractors repair or rebuild the tiles damaged by Tenant's operations. Tenant will (i) guarantee all field tile repairs conducted by the Tenant at the repair point for the term of the Lease and (ii) repair any damage to the tiles repaired by Tenant which arise within sixty months (60) months after the Commencement of Operations Date; provided, however, that such obligations will only apply to damage directly caused by Tenant's operations.

(i) During the Development Period, Landlord shall not solicit offers to lease to a third party for the purposes of developing or constructing a solar-powered electric generation facility on the Property, directly or indirectly.

SECTION 8. RENT PAYMENTS. In consideration for the lease of the Lease Area, Tenant agrees to pay Rent to the Landlord as follows:

(a) **Development Period.** During the Development Period, subject to any Rent increase For Taxes / PILOT (as may be exercised by Tenant in accordance with Section 9(c)), Tenant shall pay to Landlord the sum of US\$ **XX** per year, payable on the first day of the applicable quarter. The first full month's Quarter and rent for any partial quarter during the Development Period, if applicable, shall be paid within ten (10) business days of the Effective Date.

(b) **Operations Period.** During the Operations Period, including any extensions thereof, subject to any Rent increase For Taxes/PILOT (as may be exercised by Tenant in accordance with Section 9(c)), Tenant shall pay to Landlord the sum of US\$ **XX** per MWac per year, over Contract length (20 years), payable on the first day of the applicable quarter. The Rent shall increase at a rate of 1.5% per year during the Operations Period, including any extensions thereof.

(c) **Decommissioning Period.** During the Decommissioning Period, subject to any Rent increase For Taxes/PILOT (as may be exercised by Tenant in accordance with Section 9(c)), Tenant shall be obligated to continue to pay Landlord Rent at the rate specified in 8(b).

(d) **Payment-Method.** Rent may be paid by check or wire transfer of immediately available funds. Upon request by Tenant, Landlord shall provide Tenant with account information to which wire transfers may be made. Tenant shall pay to Landlord the Rent in four (4) equal quarterly installments during each lease year on the first day of each succeeding quarter until the expiration of the Term, unless sooner terminated. The Rent shall be payable and shall be paid to Landlord without notice or demand. Tenant, at its

option, shall have the right to prepay any portion of the Rent. Notwithstanding anything in this Agreement to the contrary, Tenant shall have no obligation to make any payment to Lessor otherwise required under this Agreement until Landlord has returned to Tenant a completed Internal Revenue Service Form W-9. In the event that Landlord assigns, transfers, or sells its interest in the Property, Landlord will provide notice to Tenant and include with such notice a copy of the transfer instrument.

(e) Landlord Remedy. If Tenant defaults in its obligations for payment of rent and such default is not cured upon thirty (30) days after notice of such default from Landlord, Landlord may, at its option, proceed with litigation. The prevailing party shall be entitled to all fees and expenses associated with such litigation, including reasonable attorney's fees.

SECTION 9. TAXES

(a) Landlord shall be responsible for all taxes assessed against the Property for the Term and any extensions thereof, other than those obligations of Tenant as detailed in Section 9(c).

(b) Reserved.

(c) The Parties acknowledge that the Property is currently exempt by any and all taxing jurisdictions as a 'District-owned property' and that the Facility to be installed by Tenant on the Property (or portion thereof) will also be exempt by any and all taxing jurisdictions (the tax exemption on the Property and the Facility shall collectively be referred to as the "Tax Exemption"). In the event that (i) this Tax Exemption is changed or revoked with respect to the Property and/or the Facility, (ii) any tax (whether real property, personal property or otherwise) is assessed by any taxing jurisdiction or authority on the Property and/or the Facility and/or (iii) a payment in lieu of taxes agreement (PILOT) is entered into with the Fishers Island Waste Management District, any other taxing jurisdiction and/or any other entity (the "PILOT Agreement"), then, in each of clauses (i), (ii) and/or (iii), Tenant shall immediately become responsible for paying a Rent increase then due and payable under this Lease on a dollar-for-dollar basis by an amount equal to (x) any taxes (whether real, personal or otherwise) then assessed and becoming due and payable on the Property and/or the Facility as a result of the termination or loss of the Tax Exemption or otherwise and/or (y) any amounts due and payable pursuant to such PILOT Agreement(s) (collectively, the "Rent Abatement For Taxes/PILOT").

In addition (and without limitation to the foregoing), the Parties hereby expressly and acknowledge and agree that Tenant shall be exempt from (and shall not, under any circumstances, be liable for) any roll-back real estate property taxes imposed by any taxing authorities due to the Property no longer meeting the definition of "Town owned property", "agricultural land" or "horticultural land" or for any other reason as a result of the Property's use as contemplated by this Lease or otherwise.

Landlord and Tenant shall reasonably cooperate to appropriately minimize any such taxes contemplated in this paragraph 9(c).

(d) Solely upon and after the occurrence of any loss or termination of the Tax Exemption, Tenant shall pay all taxes for which Tenant is directly billed on or before the date such amounts are due, subject however to the right of Tenant to contest taxes in accordance with this Lease and Applicable Law. Solely upon and after the occurrence of any loss or termination of the Tax Exemption, Tenant shall pay Landlord, within IO business days after Tenant's receipt of the applicable invoice from Landlord, the amount of such taxes for which Tenant is responsible hereunder and which have not been billed directly to Tenant. Landlord will submit copies of tax bills or notices of assessments, appraisals or statements applicable to the Facility to Tenant promptly upon receipt thereof and, to the extent Landlord pays the same directly to the taxing authorities, Landlord will promptly provide evidence of such payment to Tenant.

(e) Each Party may contest in good faith any tax assessments or payments, provided that all payments are made when due and such contest (or appeal, as the case may be) complies with applicable law.

(f) If Tenant fails to pay directly or reimburse Landlord for taxes for which Tenant is responsible hereunder, Landlord may pay the same and in such event shall be entitled to recover such amount from Tenant together with interest thereon at a rate equal to the lesser of (i) one and one-half percent (1½%) per month (eighteen percent (18%) per annum) or (ii) the highest rate allowed under Applicable Law.

(g) If Landlord fails to pay any taxes, judgments or liens that become a lien upon Tenant's interest in the Lease Area or improvements thereon for which Landlord is responsible hereunder, or fails to pay any obligations secured by a lien or encumbrance on the Property, Tenant may pay such amounts and in such event shall be entitled to recover such paid amount from Landlord, together with interest thereon at rate equal to the lesser of (i) one and one-half percent (1½%) per month (eighteen percent (18%) per annum) or (ii) the highest rate allowed under Applicable Law.

SECTION 10. TITLE; PROPERTY CONDITION; AND LIENS.

(a) Landlord represents and warrants as of the date hereof that the Landlord has good and marketable title to the Property subject to no liens, easements, options or other encumbrances other than the Existing Encumbrances specified in Appendix D. attached hereto.

(b) Landlord further represents and warrants that to its knowledge there is no hazardous or toxic substance, material, or waste that is or becomes regulated by any federal, state or local governmental authority on, under, or about the Property, except as identified in the Final Closure Plan and Post-Closure Monitoring and Maintenance Operations Manual.

- (c) After the Effective Date, in addition to Existing Encumbrances, and any refinancing of such Existing Encumbrances which does not increase the amount secured by such Existing Encumbrances, Landlord may grant a mortgage on all or part of its interest in the Property if (i) such mortgage is subject to this Lease; and (ii) the mortgagee enters into an agreement, on terms and conditions reasonably acceptable to Tenant, recognizing the priority of, Tenant's interest in the Property pursuant to this Lease.
- (d) Landlord shall not allow any encumbrances against the Lease Area other than Permitted Encumbrances.
- (e) At Tenant's request, Landlord shall use good faith efforts to obtain from holders of Permitted Encumbrances such subordinations or non-disturbance agreements as Tenant may reasonably request to protect and secure Tenant's interest in the Lease Area.
- (f) All equipment and structures included within the Facility shall, to the maximum extent permitted by law, be personal property and not real property or fixtures to real property, and title to the Facility shall be in Tenant or its mortgagees and assigns.
- (g) Landlord shall have no right or interest in any of the electric energy produced by the Facility or in any Environmental Attributes, Tax Attributes, or other rights or incentives associated with the production of electric energy by the Facility.

SECTION 11. PERMIT APPLICATIONS AND FILINGS.

Landlord shall reasonably cooperate with Tenant, to file with such federal, state and local authorities as Tenant deems appropriate (i) one or more applications to obtain any zoning relief regarding the Property or portions thereof as may be necessary and/or desirable to develop, construct and operate the Facility on the Lease Area; and (ii) one or more applications to obtain construction, use other governmental approvals or permits deemed necessary or desirable by Tenant or occupancy permits for the Facility or any portion thereof. Landlord is not obligated to incur any expense in connection with such efforts. Tenant shall provide Landlord with copies of all applications made and permits obtained in the approval process of the Facility. Landlord, hereby agrees to join, consent and sign necessary applications prepared by Tenant and authorizes Tenant, its successors and/or assignees to act as its agent and on its behalf in applying for any required permits on this limited basis only.

SECTION 12. INSURANCE AND INDEMNITY.

- (a) Landlord and Tenant shall each maintain appropriate insurance for their respective interests in, and activities on, the Property and the Facility through the Decommissioning Date of the project. Tenant's and Landlord's liability insurance required herein shall include provisions or endorsements naming or including by way of blanket endorsement the other Party as an additional insured as respects each Party's indemnification obligations outlined in Section 12(c) below and to the extent not

provided for in Section 12(c) waving all rights of subrogation against the other Party and including a similar waiver of subrogation on all policies required to be maintained herein.

(b) Tenant and Landlord covenant and agree that from and after the Effective Date each will maintain, at its sole cost and expense, the following insurance, in the amounts and form specified:

(i) Commercial General Liability insurance (including broad form property damage and contractual liabilities or reasonable equivalent thereto) covering in the case of the Tenant its use of the Lease Area and the improvements and in the case of the Landlord any of its activities on or around the Lease Area and the Improvements against claims for bodily injury or death, property damage and products liability (including completed operations coverage). Such insurance is to be written on an occurrence basis (not a claims made basis) and to be in amounts of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for each policy year.

(ii) Umbrella Liability insurance coverage on a "following form" basis with limits of not less than \$2,000,000 per occurrence and in the aggregate;

(iii) Tenant shall furnish the above insurances to the Landlord and shall also name the Landlord as an additional named insured in said policies

(iv) Any incident from which liability may arise shall be reported to the Landlord as soon as possible and not later than twenty-four (24) hours from the time of such incident. A detailed written report must be submitted to the Landlord as soon thereafter as possible and not later than three (3) days after the date of such accident.

(c) TO THE-FULLEST EXTENT PERMITTED BY LAW, EACH PARTY (THE "INDEMNIFYING PARTY") SHALL INDEMNIFY, DEFEND AND HOLD THE OTHER PARTY, ITS SHAREHOLDERS, PARTNERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND CONTRACTORS (THE "INDEMNIFIED PERSONS"), HARMLESS FROM AND AGAINST ALL LOSSES INCURRED BY THE INDEMNIFIED PERSONS TO THE EXTENT ARISING FROM, OR OUT OF, ANY CLAIM FOR, OR ARISING OUT OF, ANY INJURY TO OR DEATH OF ANY PERSON OR LOSS OR DAMAGE TO PROPERTY TO THE EXTENT ARISING OUT OF THE INDEMNIFYING PARTY'S, ITS EMPLOYEES' AND AGENTS' NEGLIGENCE, WILLFUL MISCONDUCT, OR UNLAWFUL CONDUCT.

SECTION 13. MAINTENANCE AND UTILITIES

Tenant shall be responsible for Facility and infrastructure maintenance, operation, land maintenance within the Lease Area, and any portion thereof, including access road maintenance, snow removal, and all other operation and maintenance activities related to the Facility. Tenant shall be responsible for all utilities and services related to the Facility for the Term.

SECTION 14. CONDEMNATION

- (a) If, during the Term, any competent authority for any public or quasi-public purpose ("Condemnor") seeks to take or condemn all or any portion of the Lease Area, Landlord and Tenant shall use all reasonable and diligent efforts, each at its own expense, to contest such taking.
- (b) If, at any time during the Term, any Condemnor shall condemn all or substantially all of the Lease Area or the Facility, so that the purposes of this Lease are frustrated, then the interests and obligations of Tenant under this Lease in or affecting the Lease Area shall cease and terminate upon the earlier of (i) the date that the Condemnor takes physical possession of the Lease Area or the Facility, (ii) the date that Tenant is, in its sole judgment, no longer able or permitted to operate the Facility on the Lease Area in a commercially viable manner due to direct action of any Condemnor, or (iii) the date title vests in the Condemnor
- (c) The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Tenant will include, where applicable, the value of its Facility, moving expenses, prepaid Rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent on a pro rata basis.

SECTION 15. ASSIGNMENT-RIGHT OF FIRST REFUSAL.

- (a) Tenant will have the right to assign, sell or transfer its interest under this Agreement without the approval or consent of Landlord, to Tenant's parent or member company or any affiliate or subsidiary of, or partner in, Tenant or its parent or member company, or to any entity as security for or in connection with a financing or other financial arrangement related to the Lease Area and/or the Facility as set forth in Section 19, or to any entity which acquires all or substantially all of the Tenant's assets located at the Property by reason of a merger, acquisition, or other business reorganization. Upon notification to Landlord of such assignment, transfer or sale, Tenant will be relieved of all future performance, liabilities and obligations under this Agreement. Tenant shall have the right to sublease the premises, in whole or in part, without Landlord's consent. Tenant may not otherwise assign this Agreement without Landlord's consent, Landlord's consent not to be unreasonably withheld, conditioned or delayed. Any assignment permitted hereunder shall release the assignor for any further obligations under this Lease including any liabilities accruing after the date of the assignment.
- (b) Upon any assignment pursuant to this Section 15, Tenant shall provide to Landlord current information regarding the address of the Tenant and all Financing Parties and the term "Tenant" in this Lease shall refer to the entity that was assigned the rights and obligations of Tenant hereunder.
- (c) If Landlord, at any time during the Term of this Lease, decides to sell, subdivide or rezone all or any part of the Property, to a purchaser other than Tenant, Landlord shall

promptly notify Tenant in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and Tenant's rights hereunder. Landlord agrees not to sell, lease or use any areas of the Property or surrounding property for the installation, operation or maintenance of other solar-powered electric generation facility. Landlord shall not be prohibited from the selling, leasing or use of any of the Property for non-solar-powered electric generation facility use if it does not interfere with Tenant's rights under this Lease.

(d) If at any time after the Effective Date, Landlord receives a bona fide written offer from a third party seeking an assignment of the rental stream associated with this Lease ("Purchase Offer"), Landlord shall immediately furnish Tenant with a copy of the Purchase Offer, together with a representation that the Purchase Offer is valid, genuine and true in all respects. Tenant shall have the right within thirty (30) days after it receives such copy and representation to match the Purchase Offer and agree in writing to match the terms of the Purchase Offer. Such writing shall be in the form of a contract substantially similar to the Purchase Offer. If Tenant chooses not to exercise this right of first refusal or fails to provide written notice to Landlord within the thirty (30) day period, Landlord may assign the rental stream pursuant to the Purchase Offer, subject to the terms of this Lease, to the person or entity that made the Purchase Offer provided that (i) the assignment is on the same terms contained in the Purchase Offer and (ii) the assignment occurs within ninety (90) days of Tenant's receipt of a copy of the Purchase Offer. If such third party modifies the Purchase Offer or the assignment does not occur within such ninety (90) day period, Landlord shall re-offer to Tenant, pursuant to the procedure set forth in this subparagraph 22(b), the assignment on the terms set forth in the Purchase Offer, as amended. The right of first refusal hereunder shall (i) survive any transfer of all or any part of the Property or assignment of all or any part of the Lease; (ii) bind and inure to the benefit of, Landlord and Tenant and their respective heirs, successors and assigns.

SECTION 16. FINANCING.

(a) Tenant shall have the right to encumber its leasehold interest in the Lease Area and in the Facility by security agreement or similar instrument in favor of any person providing financing in respect of the Facility (each, a "Financing Party").

(b) (i) In the event of a foreclosure or seizure of Tenant's rights with respect to the Lease Area by a Financing Party, Landlord agrees to permit such Financing Party or its transferee to exercise any and all rights of Tenant hereunder without Tenant consent, so long as such Financing Party or its transferee shall tender performance of Tenant's obligations under this Lease from and after the date of any such foreclosure or exercise of rights. Landlord further agrees to give each Financing Party sixty (60) days' notice of and the opportunity to cure any Payment Default by Tenant and one hundred and twenty (120) days' notice of and the opportunity to cure any Non-payment Default by Tenant hereunder.

(ii) If the Financing Party elects to cure, but cannot remedy a non-monetary default in such one hundred and twenty-day (120) period, then Landlord shall give Financing Party

an additional reasonable extension of time to do so, provided that Financing Party continues to pursue such remedies with reasonable diligence. The commencement and pursuit of a judicial or non-judicial foreclosure proceedings by a Financing Party shall be deemed the commencement of a non-monetary cure.

(iii) In the event that a Default under this Lease is a result of the bankruptcy of Tenant or is otherwise incapable of being cured by a Financing Party or if the Lease is rejected in connection with a bankruptcy proceeding by Tenant, a trustee in a bankruptcy or other such party to such proceeding on behalf of Tenant, within (10) days after a request from a Financing Party, which request has been made within thirty (30) days following said Financing Party's receipt of written notice of such Default or rejection of the Lease in a bankruptcy proceeding, Landlord agrees that it will, at Financing Party's sole option, enter into a new lease with a Financing Party or its nominee for the remaining portion of the Term, and upon the terms and conditions that would have been applicable for such period under this Lease had the Default not occurred, it being the intention of the parties if a Financing Party so elects, to preserve the Lease and the benefit of the leasehold estate created by this Lease for the benefit of a Financing Party without interruption and for no additional consideration from a Financing Party. Any new lease shall be superior to all rights, liens and interest intervening between the date of this Lease and the granting of a new lease and shall be freed of any and all rights of Tenant under this Lease.

(c) Landlord shall promptly after a written request by Tenant, execute and deliver to Tenant (or to such party as Tenant shall designate), a written statement certifying as to (w) whether this Lease is in full force and effect, (x) the dates through which amounts due to Landlord have been paid, (y) there are any known defaults or ongoing disputes between Landlord and Tenant and (z) such other matters as may be reasonably requested by the Tenant.

SECTION 17. RECORDATION.

(a) The Parties agree that this Lease shall not be recorded, but the Parties shall execute and record a Memorandum of Lease or similar instrument ("Memorandum Lease"), attached hereto in Appendix E, and a Notice of Easement ("Notice of Easement") in customary form to evidence the grant of leasehold and easements under this Lease. Recordation of the Notice of Lease and the Notice of Easement shall be at Tenant's expense.

SECTION 18. DEFAULT AND REMEDIES.

(a) If Tenant shall fail to perform any of Tenant's material obligations under this Lease and such failure shall remain uncured following the required notice and cure periods as provided below (a "Default"), Landlord shall have the right to terminate this Lease by notice to Tenant and exercise any other remedies provided in this Lease or under applicable law. A Default may be either a Payment Default or a Non-Payment Default. A "Payment Default" shall mean the failure to make timely payments of a

financial nature as provided herein. Landlord agrees to simultaneously notify in writing the Tenant and all Financing Parties of Tenant who have given advance notice of their interest in this Lease to Landlord, of any failure by Tenant to perform any of the Tenant's obligations under this Lease, which notice shall be sent to the address set forth herein and as might be subsequently provided to Landlord and shall set forth in reasonable detail the facts pertaining to such failure and specify a reasonable method of cure.

(b) The Tenant shall have the opportunity to cure any Payment Default within thirty (30) days of said notice by paying all then overdue payments in full together with interest thereon at the rate of one and one-half percent (1½ %) per month.

(c) The Tenant and any Financing Party shall have the opportunity to cure any Non-Payment Default within 90 days of said notice or, in the event that a cure might take longer than 90 days because of the nature of the Non-Payment Default or because of climatic conditions of the Lease Area, the Tenant or the Financing Party on the Tenant's behalf, shall notify Landlord of the anticipated date for curing of the Non-Payment Default and shall begin to diligently undertake the cure within the 90 day period.

(d) If Landlord shall fail to perform any of its obligations hereunder, Tenant may cure such default and, if Landlord fails to reimburse Tenant the amounts paid by Tenant to effectuate such cure within ten (10) days after demand, Tenant may offset against any amounts owing to Landlord hereunder any amounts paid by Tenant to cure such non-performance by Landlord together with interest thereon at the rate of six percent (6%) per annum. In addition, in the event of a Landlord default, Tenant may exercise any other remedies available under this Lease or Applicable Law, or in equity, including without limitation the right to seek specific performance, injunction or declaratory judgment, without any obligation to post any security.

(e) The Parties acknowledge and agree that Tenant's access to property and the covenants and restrictions contained in this Agreement are necessary, fundamental, required and specifically designed to protect the legitimate business interests of Tenant; (b) such covenants and restrictions and access to the Property relate to matters that are of a special, unique, and extraordinary character; and (c) a breach of any such covenants or restrictions will result in irreparable harm and damages to Tenant that cannot be adequately compensated by a monetary award. Accordingly, the Parties expressly agree that in the event of an actual or threatened breach by Landlord of its obligation, Tenants shall be entitled to a temporary restraining order or an injunction (or both) to specifically enforce the provisions of this Agreement. Further, nothing herein shall be construed as prohibiting compensation to Tenant for such breach or threatened breach, including (but not necessarily limited to) recovery of damages or reasonable attorneys' fees.

(f) Notwithstanding anything to the contrary herein, neither party shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including but not limited to loss of use or loss of profit or revenue.

SECTION 19. DECOMMISSIONING. Upon expiration of the Operations Term or any earlier termination of this Lease following a Default hereunder by Tenant, Tenant shall Decommission the Facility within the Decommissioning Period. Tenant shall post an appropriate bond which shall be kept on file with the Fishers Island Waste Management District covering the costs of removal and remediation throughout the decommissioning process. The provisions of this Section 19 shall survive any termination of this Agreement.

SECTION 20. FORCE MAJEURE. If performance of this Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of "Force majeure" (defined below), the affected party, upon giving notice to the other party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. "Force Majeure" means: (i) Acts of God or acts of Providence including hurricanes, tornados, floods, washouts, lightning, earthquakes, storm warnings and any other adverse weather conditions which directly result in a party's inability to perform its obligations, (ii) acts of government or any agency, subdivision or instrumentality thereof having, claiming, or asserting authority or jurisdiction over the subject matter, when any such act of government directly results in a party's inability to perform its obligations, (iii) acts of civil disorder including acts of sabotage, acts of war, lockouts, insurrection, riot, mass protests or demonstrations, threats of any of the foregoing, and police action in connection with or in reaction to any such acts of civil disorder, when any such acts of civil disorder directly results in a party's inability to perform its obligations, and (iv) failures resulting from fires, washouts, mechanical breakdowns of or necessities for making repairs or alterations to transformers, power lines, switching equipment, inverters, machinery, cables, meters or any of the equipment therein or thereon, when any such failure directly results in a Party's inability to perform its obligations.

SECTION 21. NOTICES.

Notices under this Lease shall be sent to the addresses set forth below:

LANDLORD:

Fishers Island Waste Management District

XXX
XXX
XXX

TENANT:

Developer
XXX
XXX
XXX

Notices shall be deemed received if sent by certified mail (return receipt requested), courier or nationally recognized overnight delivery service to last known address of the intended recipient. Notices may also be sent by email for which the sending Party receives a confirmation that the email message has been completely transmitted without error (of which autoreplies are

insufficient). Email messages received on any day that is not a business day, or after 5:00 p.m. local time on a business day, shall be deemed to have been delivered on the next business day. A Party may change its address for delivery of notices hereunder by notice given in accordance with this Section. Failure of the Tenant to notify the Landlord of an address change for it or any Financing Party shall excuse the Landlord from complying with any notice obligation herein to such changed addresses, provided however that the Landlord will in no event be excused from providing notices required herein to all addresses that Landlord has notice of. Notices will be deemed given upon receipt or upon the failure to accept delivery.

In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landlord will send the documents listed below to Tenant. In the event Tenant does not receive such appropriate documents, Tenant shall not be responsible for any failure to pay the current landlord.

- (a) Old deed to Property
- (b) New deed to Property
- (c) Bill of Sale or transfer
- (d) New W-9
- (e) New Payment Direction Form
- (f) Full contact information for new Landlord including all phone numbers

SECTION 22. NO PARTNERSHIP.

Landlord does not, in any way or for any purpose, become a partner of Tenant in the conduct of its business, or otherwise, or joint venture or a member of a joint enterprise with Tenant by reason of this Lease. Tenant shall bear sole responsibility for payment of any commissions or broker's fees to Tenant's agents, brokers or investors.

SECTION 23. MISCELLANEOUS PROVISIONS.

- (a) Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State in which the Leased Area is located.
- (b) Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words "hereto", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "person" shall include individuals; partnerships; corporate bodies (including to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word "including" shall be deemed to be followed by the words "without limitation".
- (c) Entire Agreement / Amendment. This Lease contains the entire agreement of the Parties and there are no-other promises, conditions, understandings or other agreements,

whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the Parties.

(d) Severability. If any non-material part of this Lease is held to be unenforceable, the rest of the Lease will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Lease to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision.

(e) Waiver. The failure of either Party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

(f) Binding Effect. The provisions of this Lease shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

(g) No Assurance as to Development. The Landlord hereby agrees and acknowledges that the Tenant makes no representations, warranties, commitments or guarantees of any kind as to the likelihood of the Tenant successfully developing, financing and/or constructing a Facility on the Lease Area and the Landlord receiving Rent hereunder. The Landlord makes no representation, warranties or guarantees of any kind as to the suitability of the site for Tenant's intended use.

(h) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Lease may often require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Lease specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party.

(i) Business Days. Any payment or other obligation which is due to be performed on or before a day which is not a business day in the state in which the Leased Area is located shall be paid on the next succeeding business day.

(j) Mechanics Liens. Tenant will not permit any mechanic's lien or liens to be placed upon the Property or any building or improvement thereon during the term hereof for work done on behalf of Tenant and in case of the filing of such lien Tenant will promptly pay same or post a bond to remove such lien from the land records. If default in payment thereof shall continue for thirty (30) days after written notice thereof from Landlord to the Tenant, the Landlord shall have the right and privilege at Landlord's option of paying the same or any portion thereof without inquiry as to the validity thereof, and any amounts so paid, including expenses and interest, shall be so much additional indebtedness hereunder due from Tenant to Landlord and shall be repaid to Landlord immediately on rendition of bill therefor.

(k) No Merger. There shall be no merger of the lease and any other estate of interest in the Property, whether owned by the Tenant or anyone else.

(l) Waiver of Landlord's Liens. Landlord waives any and all lien rights it may have, statutory or otherwise, concerning the facility or any portion thereof. The solar-powered electric generation facility equipment and improvements shall be deemed personal property for purposes of this Lease, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord consents to Tenant's right to remove all or any portion of the facility from time to time in Tenant's sole discretion and without Landlord's consent.

(m) Counterparts. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the Parties.

[The remainder of this page has been intentionally left blank. Signatures appear on next page]

IN WITNESS WHEREOF, this Lease is entered into by the Parties as of the Effective Date.

TENANT
Developer

LANDLORD
Fishers Island Waste Management
District

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

GLOSSARY OF TERMS

As used herein, the following terms shall have the meanings set forth beside them:

"Applicable Law" means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein.

"Commercial Operation" shall occur for the Facility when (i) Tenant has obtained all necessary licenses, permits-and -approvals under Applicable Law for the installation and operation of the Facility, (ii) the Facility has been connected to the local electricity distribution system, (iii) the Facility is ready and able to generate and supply electricity, and (v) if applicable and to the extent required, the local electric distribution company has approved interconnection with the electricity distribution system to allow regular operation of the Facility.

"Commercial Operation Date" means the date, to be designated in accordance with Section 6(b), hereof, that the Facility shall have achieved Commercial Operation.

"Decommission" or "Decommissioning": means performance of the activities described in Section 5(c).

"Decommissioning Period" is defined in Section 4(a)(iii).

"Default" is defined in Section 18(a).

"Development Period" is defined in Section 4(a)(i).

"District owned Property" shall mean properties owned by the Fishers Island Waste Management District.

“Easement(s)” shall mean those portions of the Property as described in Section 3, which boundaries Tenant shall determine during the Development Period by means of a survey as specified in Appendix C: Such survey shall be an amendment to the Lease, and the Easement(s) shall then mean the areas as set forth in such amendment, to be detailed in Appendix C.

"Environmental Attributes" means renewable energy certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement (other than Tax Attributes) pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time.

"Existing Encumbrances" mean those interests in the Property set forth in Appendix U attached hereto.

"Facility" means the solar powered electric generating facility and accompanying energy storage and distribution system with an anticipated generating capacity of approximately of up to six (6) megawatts DC and all related equipment and structures, including inverters, transformers and facilities for interconnection with the local electricity distribution company, to be installed by Tenant on the Lease Area in accordance with this Lease.

"Financing Party" is defined in Section 16(a).

"Force Majeure" is defined in Section 20.

“Governmental Authority” means any international, national, federal, state, municipal, county, regional or local government, administrative, judicial or regulatory entity, and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Lease Area” means the Property, until further described as follows: During the Development Period, Tenant shall determine the portion of the Property needed for Tenant's use under this Lease by means of a survey as specified in Appendix B and such area(s) shall determine the Lease Area boundary. Such survey shall be an amendment to the Lease as Appendix B. and the Lease Area shall then mean the areas as set forth in such amendment.

"Losses" means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all attorney's fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

"Non-payment Default" is defined in Section 18(a).

"Notice of Lease" is defined in Section 17(a).

"Operating Year" means a twelve-month period commencing on an anniversary of the Commercial operation Date (or with respect to the first Operating Year, commencing on the

Commercial Operation Date) and ending on the date immediately preceding the next anniversary of the Commercial Operation Date.

“Operations Period” is defined in Section 4(a)(ii).

"Parties" means Landlord and Tenant and "Party" means either Landlord or Tenant.

“Payment Default” is defined in Section I 8(a).

"Permitted Encumbrances” mean the Existing Encumbrances and any additional mortgages granted by Landlord in accordance with Section 10(b) hereof.

“Permitted Use” means the use of the Lease Area for the development, installation, construction, interconnection, maintenance, operation, repair, replacement and decommissioning of the Facility and energy storage device(s) and for the production, delivery and sale of electricity produced by the Facility and associated Environmental Attributes.

"Property" means the real property described in Appendix A attached hereto, which includes the Lease Area and the Easement Parcels.

"Rent" means the payments to be made in accordance with Section 8 hereof.

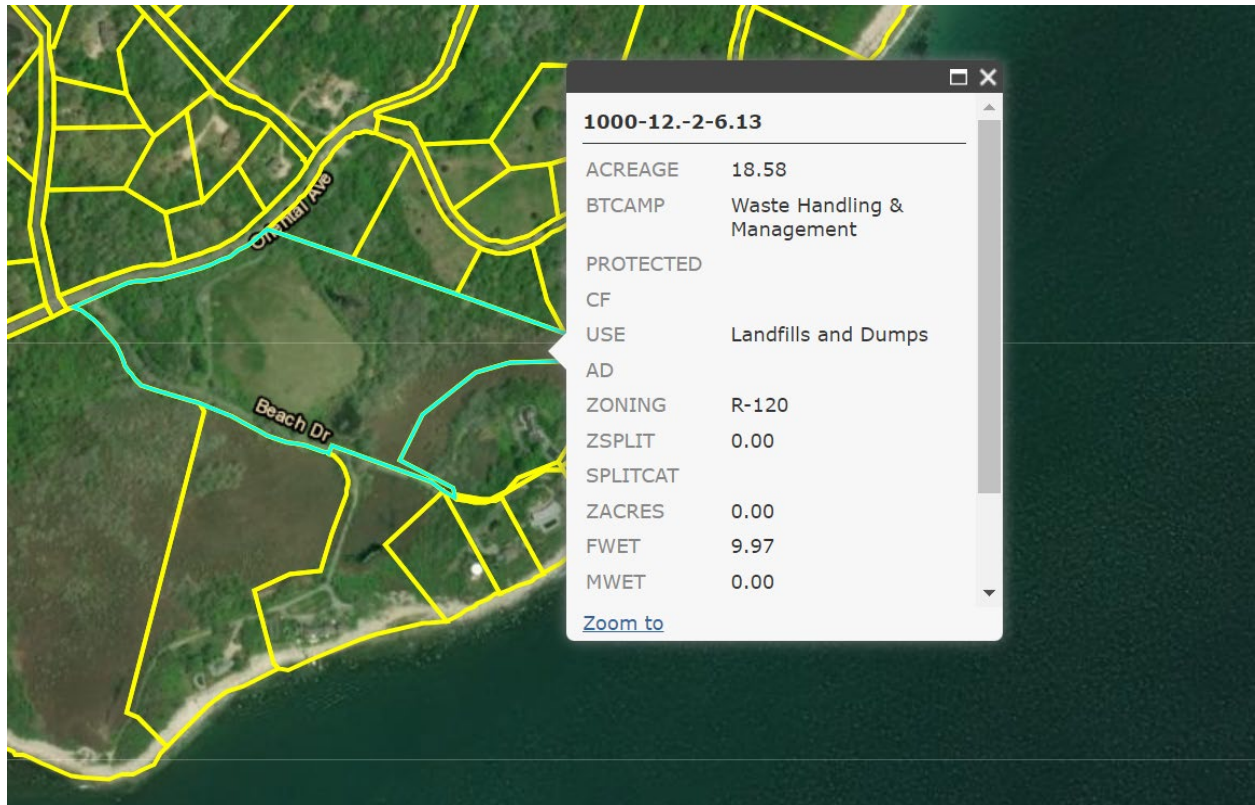
"Tax Attributes" means investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and/or operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

"Term" shall mean all of the Development Period, the Operations Period, and the Decommissioning Period, as such periods are described in Section 4.

APPENDIX A

PROPERTY DESCRIPTION

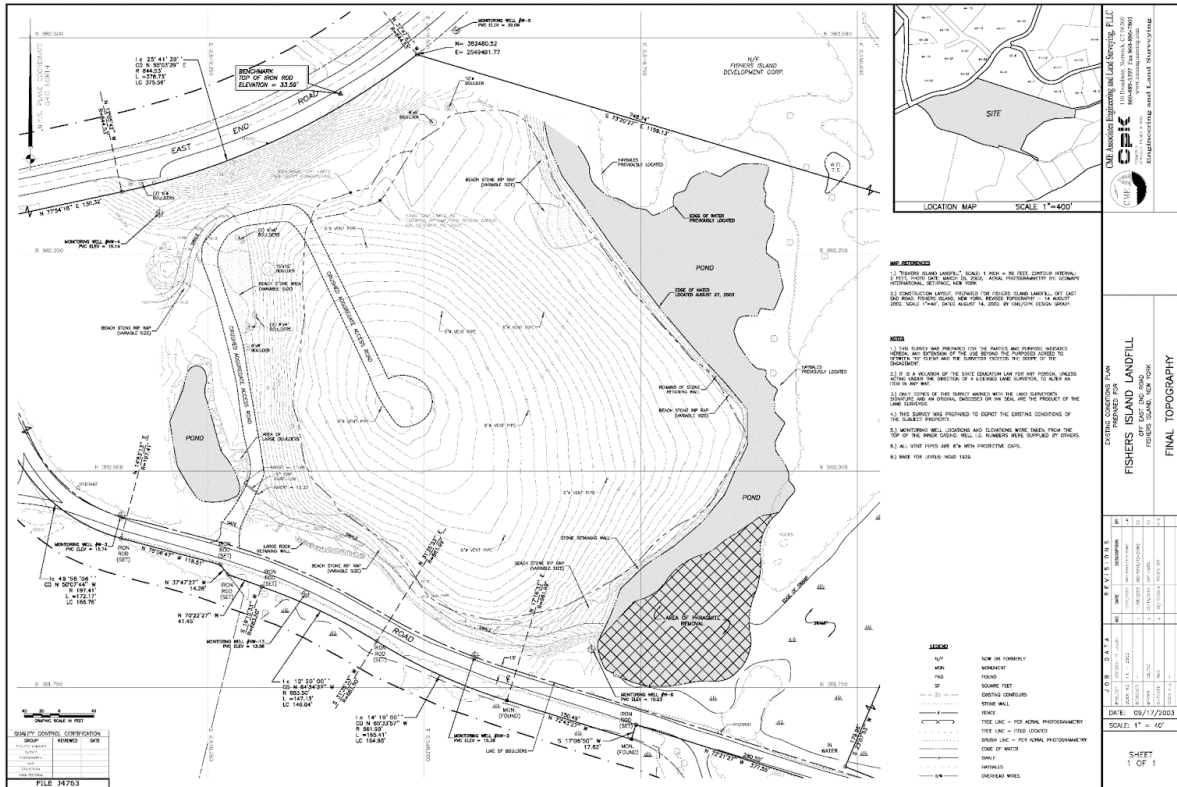
The 18.58 acre parcel located at Wilderness Road (Parcel ID: 12.-2-6.13), Southold, New York, as highlighted below.



APPENDIX B

LEASE AREA

A portion of the 18.58 acre parcel located Wilderness Road (Parcel ID: 12.-2-6.13), Southold, New York, that corresponds approximately with the capped landfill area.



1. This Exhibit will be replaced by a survey and/or construction drawings of the Lease Area developed by the Tenant in compliance with applicable governmental regulations and authorities.
2. Any setback of the Lease Area from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities.
4. Any type, number, mounting positions, and locations of equipment are illustrative only. Actual types, number, mounting positions, and locations of equipment may vary from what is shown above.

APPENDIX C

EASEMENT PARCELS

[To be populated by **Developer** if needed]

- I. This Exhibit may be replaced by a land survey and/or construction drawings of the Easement Parcels once received by the Tenant.
2. Any location of the easement improvements, signage, gates, boundaries, or access to public rights of way shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities.

APPENDIX D EXISTING ENCUMBRANCES

EXHIBIT E
MEMORANDUM OF LEASE AND EASEMENTS

This Memorandum of Lease is entered into on this **XX day of XX, 20XX** by and between Fishers Island Waste Management District, having a mailing address 2760 Whistler Ave # 22 Fishers Island, NY 06390 (hereinafter referred to as "Landlord") and **Developer, having a mailing address of XXXX XXXXXX** (hereinafter referred to as "Tenant").

1. Landlord and Tenant entered into a certain Ground Lease ("Lease") on the **XX day of XX, 20XX** for the purpose of installing, operating, and maintaining a solar-powered electric generation facility ("Generation Facility") and easements for access and servicing the facility. All of the foregoing are set forth in the Lease.
2. The Lease includes a Development Period effective from the date of the Lease and for two (2) years with options to extend the Development Period. The initial lease term will be twenty years commencing on the effective date of written notification by Tenant to Landlord of the start of the Operations Period Commencement Date, with two successive five year options to renew, and then a Decommissioning Period of up to 180 days.
3. The portion of the land within which the Lease Area where the Generation Facility and the supporting easements will be located is described in Exhibit 1 annexed hereto.
4. This Memorandum of Lease and Easements is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Lease, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum and the provisions of the Lease, the provisions of the Lease shall control. The Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Lease.

TENANT ACKNOWLEDGMENT

STATE OF NEW YORK
COUNTY OF SUFFOLK

On the **XX day of XX, 20XX** before me personally appeared **XX** and acknowledged under oath that he/she is a duly authorized manager of **Developer**, the entity named in the attached instrument, and as such was authorized to execute this instrument on behalf of the entity.

Notary Public:

Commission expires:

LANDLORD ACKNOWLEDGMENT

STATE OF NEW YORK
COUNTY OF SUFFOLK

On the **XX day of XX, 20XX** before me personally appeared **XX** and acknowledged under that he/shee is a duly authorized manager of the Fishers Island Waste Management District, the district named in the attached instrument, and as such was authorized to execute this instrument on behalf of the district.

Notary Public:

Commission Expires: