

**TOWN OF CHESTER  
PLANNING BOARD SITE PLAN APPLICATION**

DATE 10/2/15

APPLICANT SUNEDISON, LLC.

ADDRESS 7550 WISCONSIN AVENUE

BETHESDA, MARYLAND 20814

TELEPHONE (203) 482-1900 EMAIL cbatn@sunedison.com

OWNER OF PROPERTY (IF NOT SAME AS ABOVE)

JOHNSON REALTY

ADDRESS 112 JOHNSON ROAD

CHESTER, NY 10918

TELEPHONE # \_\_\_\_\_

APPLICANT \_\_\_\_\_

ADDRESS \_\_\_\_\_

TELEPHONE \_\_\_\_\_ EMAIL \_\_\_\_\_

**PERSON WHO IS RESPONSIBLE FOR ANY FEES INCURRED  
AND WHO IS TO RECEIVE STATEMENTS:**

NAME FELLENZER ENGINEERING, LLP

BILLING ADDRESS 22 MULBERRY ST, SUITE 2A, MIDDLETOWN, NY 10940

E-MAIL ADDRESS VLL@FELLP.COM

CONTACT PHONE # 845-343-1481

**PROPERTY DESCRIPTION:**

TAX MAP SECTION 1 BLOCK 1 LOT 4

LOCATION OF PROPERTY 121 JOHNSON ROAD

SQUARE FOOTAGE 83.8 AC PRESENT ZONING AR-3

NAME OF PROJECT

JOHNSON FARM SOLAR ARRAY

INTENDED USE

COMMERCIAL AGRICULTURAL  $\frac{1}{2}$  PUBLIC UTILITY STRUCTURES  
(SOLAR FIELD)

NUMBER OF LOTS

(1) ONE

PROJECT ENGINEER FELLENZER ENGINEERING, LLP

ADDRESS 22 MULBERRY ST, STE 2A, MIDDLETOWN, NY  
10940

EMAIL MOF@FELLP.COM

TELEPHONE # 845-343-1481 LICENSE # 064946-1

PROJECT ATTORNEY SIEMENS INDUSTRY INC.

ADDRESS \_\_\_\_\_

EMAIL \_\_\_\_\_

TELEPHONE # \_\_\_\_\_

TOWN OF CHESTER PLANNING BOARD

JOHNSON FARM  
PHOTOVOLTAIC ARRAY  
PROJECT NAME

PRESUBMISSION  
PLAN ELEMENT CHECKLIST FOR  
PRELIMINARY SITE PLAN

The following checklist items shall be incorporated on the Site Plan prior to consideration of being placed on the Planning Board Agenda.

1. ☒ Name and address of applicant.
2. ☒ Name and address of owner (if different from applicant).
3. ☒ Tax Map Data (Section-Block-Lot).
4. ☒ Location map at a scale of 1" = 2,000 ft. or less on a tax map or USCGS map base only with property outlined.
5. ☒ Zoning table showing what is required in the particular zone and what applicant is proposing.
6. ☒ Show zoning boundary if any portion of proposed site is within or adjacent to a different zone.
7. ☒ Date of plan preparation and/or plan revisions.
8. ☒ Scale the plan is drawn to (Max 1" = 100')
9. ☒ North arrow pointing generally up.
10. ☒ Planning Board Approval Box near lower right corner of plans (2½"x4") for Stamping
11. ☒ Plan Legend (symbols & labels)
12. ☒ Surveyor's and Engineer's Certification and Title Block.
13. ☐ TBD Name of adjoining owners.
14. ☐ TBD Wetlands and required buffer zone with an appropriate note regarding DEC or ACOE requirements as applicable.
15. ☒ Delineation of wooded areas and isolated trees with diameters of 12 inches or greater. Show clearing limits.
16. ☒ Flood plain boundaries.

17. NA Certified sewerage system and water supply design and placement by a Licensed Professional Engineer must be shown on plans.
18. TBD Metes and bounds of parcel.
19. X Name and width of adjacent streets; the road boundary is to be a minimum of 25 ft. from the physical center line of the street with dedication offerings as required.
20. TBD Show existing or proposed easements (note restrictions).
21. TBD Right-of-way width and Rights of Access and Utility Placement.
22. X Lot area.
23. TBD Show any existing waterways, including intermittent streams.
24. X Applicable note pertaining to owner's review and concurrence with site plan together with owner's signature.
25. NA Show any improvements, i.e., drainage systems, water lines, sewer lines, etc.
26. X Show all existing buildings, houses, accessory structures, wells and septic systems on and within 200 ft. of the parcel.
27. TBD Show topographical data with 2 ft. contours extending 100' from property line based upon USGS datum.
28. TBD Indicate any reference to a previous subdivision, i.e., filed map number, date and previous lot number.
29. NA Show lighting plan and luminaire projection data.
30. NA Show driveway entrance sight distances.
31. TBD Show landscaping and signage.
32. TBD Stormwater Management and Erosion and Sedimentation Control Plans.
33. NA Paving limits and cross-sectional detail.

The following is to be included in the Project Narrative:

34. X Number of acres to be cleared or timber harvested.
35. X Estimated or known cubic yards of material to be excavated and removed from the site.
36. X Estimated or known cubic yards of fill required.

37. ☒ The amount of grading expected or known to be required to bring the site to readiness.
38. ☒ Type and amount of site preparation which falls within the 100 ft. buffer strip of State Wetlands. Please explain in sq. ft. or cubic yards.
39. ☒ Any amount of site preparation within a 100 year floodplain or any water course on the site. Please explain in sq. ft. or cubic yards.
40. ☐ Check here if sketch plan conference is requested. See Town of Chester Zoning §98-30E.

The plan for the proposed site has been prepared in accordance with this checklist.

By: FELLANZER ENGINEERING, LLP  
Applicant's Licensed Professional

Date: 10/2/15

This list is designed to be a guide ONLY. The Town of Chester Planning Board may require additional notes or revisions prior to granting approval.



**PLANNING BOARD DISCLAIMER STATEMENT**  
**TO APPLICANTS**

The applicant is advised that the Town of Chester Municipal Code which contains the Town's Zoning Law, is subject to amendment. Submission of an application to this Board does not grant the applicant any right to continued review under the code's current standards and requirements. It is possible that the applicant will be required to meet changed standards or new code requirements made while the application is pending.

An approval by this Board does not constitute permission, nor grant the right to connect to or use municipal services such as sewer, water or roads. It is the applicant's responsibility to apply for and obtain the Town of Chester and other agency approvals not within this Board's authority to grant.

The applicant hereby acknowledges, consents, and agrees to the above.

10/05/2015  
DATED

Nick Vacyk  
APPLICANT'S NAME (PRINTED)

[Signature]  
APPLICANT'S SIGNATURE

Notary Public  
State of ~~NY~~ New Jersey  
County of Orange Union

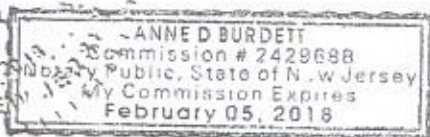
I hereby depose and say that all the above statements and information, and all statements and information contained in the supporting documents and drawings attached hereto are true, that the application rules have been read and the requirements therein set forth are fully met. Further, I understand that compliance with the Town of Chester Zoning Ordinance and the Subdivision Regulations shall be the sole responsibility of the applicant and the owner or their representatives, and that compliance with the subject matter contained therein shall be deemed part of this application.

[Signature]  
Signature of Applicant

Sworn to before me this 5th

day of October 2015

Anne D. Burdett  
Notary Public



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The applicant hereby acknowledges, consents, and agrees to the above.

10/05/2015  
DATED

NICK YACEK  
APPLICANT'S NAME (PRINTED)

[Signature]  
APPLICANT'S SIGNATURE

Notary Public  
State of ~~NY~~ New Jersey  
County of Orange Union

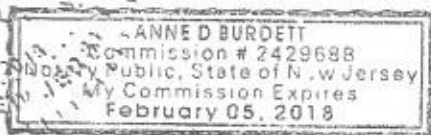
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[Signature]  
Signature of Applicant

Sworn to before me this 5th

day of October 2015

Anne D. Burdett  
Notary Public



OWNER AUTHORIZATION

State of New York  
County of Orange

I SEE ATTACHED LEASE AGREEMENT  
Owner

residing at \_\_\_\_\_  
Owner Address

being the owner of premises \_\_\_\_\_  
Property Location

also known as Orange County Tax Map # \_\_\_\_\_  
Tax Map #

hereby authorize \_\_\_\_\_  
Agent

whose mailing address is \_\_\_\_\_  
Agent address

to appear on my behalf before the Planning Board of the Town of Chester,  
and to file any documents required with reference to my application for :

\_\_\_\_\_  
I hereby allow my agent, whose name appears above, to act on my behalf  
and I further agree to abide by any requirements imposed by the Board as a  
condition of their approval.

\_\_\_\_\_  
Owner Signature

Sworn to before me this \_\_\_\_\_

day of \_\_\_\_\_, 201 \_\_\_\_\_



## AMENDED AND RESTATED OPTION AGREEMENT

This AMENDED AND RESTATED OPTION AGREEMENT (this "Agreement") is entered into as of the Effective Date by and between Owner and Optionee (defined below).

WHEREAS, Owner and Optionee entered into that certain Option Agreement (the "Original Option"), dated as the Commencement Date (defined below), pursuant to which Owner granted to Optionee, and Optionee accepted from Owner, an exclusive option to purchase or lease the Land (defined below); and

WHEREAS, the Owner and Optionee desire to amend and restate the Original Option (a) to provide that any lease signed in connection with this Agreement shall be in the form of ground lease agreement attached to this Agreement as Exhibit C, and (b) to set forth the respective rights of the parties thereto.

NOW, THEREFORE, in consideration of the foregoing mutual promises of the parties herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Optionee and Owner hereby agree as follows:

### BASIC OPTION PROVISIONS

**EFFECTIVE DATE**

August 18, 2015.

**OWNER**

Johnson Realty, a New York partnership.

**OPTIONEE**

First Wind Solar Portfolio, LLC and/or its assigns, a Delaware limited liability company

**PROPERTY**

Those certain parcels of real property, any improvements located thereon and rights, benefits and easements appurtenant to the parcels located in the Towns of Chester and Goshen, County of Orange, State of New York as more particularly described on Exhibit A.

**LAND**

Approximately no less than ten (10) acres but no greater than fifteen (15) acres of the Property as generally depicted on Exhibit B, together with all appurtenant rights and easements.

**COMMENCEMENT DATE**

December 29, 2014.

**OPTION PERIOD**

Twelve (12) months from the Commencement Date, as may be extended pursuant to Section 2(a) below.

**OPTION PAYMENT**

An amount equal to Two Thousand Five Hundred Dollars (\$2,500) per twelve (12) month period (each an "Option Payment", and collectively, the "Option Payments").

**OWNER'S ADDRESS FOR  
NOTICES**

Johnson Realty  
112 Johnson Road  
Chester, New York 10918  
Attn: Gary Johnson  
Phone: 845-325-1796  
E-mail: johfarm@gmail.com

**OPTIONEE'S ADDRESS  
FOR NOTICES**

First Wind Solar Portfolio, LLC  
c/o SunEdison  
12500 Baltimore Avenue  
Beltsville, MD 20705  
Attn: Cliff Scher  
Phone: (240) 485-9346  
E-mail: cscher@sunedison.com

With a copy to:

Sun Edison LLC  
Attn: Shana Margolis Goldberg  
Assistant General Counsel  
44 Montgomery Street, Suite 2200  
San Francisco, CA 94104  
Phone: (415) 229-8843  
E-mail: sgoldberg@sunedison.com

**LIST OF EXHIBITS**

EXHIBIT A – Legal Description of the Property

EXHIBIT B – Depiction of the Land

EXHIBIT C – Form of Ground Lease

1. **Grant of Option.** Owner hereby grants to Optionee the exclusive option (the "Option") to purchase all or any portion of the Land pursuant to a purchase and sale agreement mutually agreed upon by Owner and Optionee or lease all or any portion of the Land and obtain any easements for access and transmission lines (the "Easements" and together with the Land, the "Premises") that Optionee deems necessary for the Project (defined below), in accordance with this Agreement and one or more ground lease agreements (each, a "Lease") to be signed by Owner and Optionee (or its assignee or designee) in the form attached hereto as **Exhibit C**. "Project" shall mean any solar electric generating facility to be constructed and operated on any portion of the Premises, pursuant to a Lease. The parties shall execute and deliver a Lease pursuant to **Sections 3 and 4** below with respect to the portion of the Land exercised by Optionee as described in such Option Notice. During the Option Period (defined below), Owner shall not negotiate, discuss, or enter into any agreement with any third party regarding the solar resource on or around the Property or utilizing the Property for electric transmission purposes, whether through developing solar energy facilities on or around the Property or otherwise. Owner and Optionee may, by mutual written agreement, amend or extend this Option.

2. **Option Term and Payment.**

(a) **Option Period.** The period during which the Option may be exercised shall commence on the Commencement Date and continue until the expiration of the Option Period as described in the Basic Option Provisions above. Optionee may extend the Option Period for one (1) additional term of twelve (12) months by providing notice of such extension to Owner prior to the end of the Option Period, along with the payment of an additional Option Payment, paid within thirty (30) days of the first (1<sup>st</sup>) anniversary of the Commencement Date. Notwithstanding the foregoing, the Option Period shall automatically terminate upon the earlier of (i) execution of Lease agreements as to all of the Land described in this Agreement; (ii) Optionee providing

written notice of its election to cancel this Agreement (in Optionee's sole and absolute discretion); or (iii) 5:00 p.m. where the Property is located on the date of expiration of the Option Period, as such date may be extended as described above.

(b) **Option Payment.** Owner and Optionee acknowledge and agree that Optionee made the original Option Payment on January 16, 2015, in accordance with Section 2.0 of the Original Option. If Optionee fails to exercise the Option hereunder or terminates the Option pursuant to **Section 14(c)**, Owner shall retain the all Option Payments it has received up to the date of termination (if any) and all remaining Option Payments shall be forfeited by Owner except as otherwise expressly provided herein.

3. **Notice of Exercise of Option.** Optionee may exercise the Option as to all or any portion of the Land at any time during the Option Period by delivering to Owner a written notice exercising the Option (an "Option Notice") and identifying the portion of the Land exercised by such Option Notice. Such Option Notice shall contain a Lease for such portion of the Land, which Lease must be executed by Owner and Optionee at Closing (defined below). In the event that Optionee exercises the Option as to any portion of the Land, Optionee shall retain the right to exercise the Option on the remainder of the Land (or any portion thereof) throughout the Option Period. Notwithstanding the foregoing, in the event that Optionee exercises the Option between April 1<sup>st</sup> and November 1<sup>st</sup> of any given calendar year without providing prior notice to Owner of such intended exercise prior to April 1<sup>st</sup> of such year, Optionee shall pay Owner an amount equal to the fair market value of the crops Owner is unable to harvest from the Land that is exercised. If the Option is exercised between November 1<sup>st</sup> of any given calendar year and March 31<sup>st</sup> of the following calendar year, no prior notice or compensation shall be due to Owner in connection with Optionee's exercise of the Option on the Land.

4. **Closing.** Upon delivery of an Option Notice to Owner in accordance with **Section 3**



above with respect to any portion of the Land, the execution of the relevant Lease as to that exercised portion of the Land by Owner and Optionee shall take place on the date and time designated by Optionee (the "Closing"). Optionee shall pay for the cost of any survey, preliminary title report and/or policy of title insurance. Owner shall be responsible for real property taxes and assessments and any taxes payable by or assessed against the Property or Owner during the Option Period. Each party shall be responsible for its own attorneys' and consultants' fees. Upon a Closing with respect to a portion of the Land, the Option shall continue in accordance with Section 2(a) above.

5. Due Diligence/Title.

(a) Due Diligence. Within ten (10) days following the Effective Date or as otherwise agreed by Owner and Optionee, Owner will provide to Optionee to the extent the following documents exist, (i) copies of the most recent property tax bills for the Property; (ii) a complete set of all available reports (including any environmental reports), agreements, plans, inspections, tests, studies or other technical or engineering materials concerning the Land and any potential Easements required for the Project, including, but not limited to, traffic studies, geotechnical studies, soil or groundwater studies, environmental reports, zoning and any other documents affecting the Land and any potential Easements or any improvements thereon.

(b) Title. Owner will cooperate with Optionee, at Optionee's cost, to allow Optionee to obtain a preliminary title report on the Property (the "Title Report"), as well as copies of each document underlying any matters set forth in said report (each, an "Exception"). Notwithstanding whether Owner has agreed to remove an identified Exception or correct a Survey matter or not, Owner shall cooperate with Optionee in efforts to obtain a release, subordination, non-disturbance agreement, consent or other agreement (in a form and containing provisions reasonably acceptable to Optionee) from the holder(s) of the rights of such Exception or Survey matter that will

eliminate such issue for the benefit of Optionee. Optionee may elect to obtain an ALTA or boundary survey of the Property prepared by a licensed surveyor, at Optionee's cost ("Survey").

6. Right of Entry. Beginning on the Commencement Date and throughout the Option Period, Owner shall provide to Optionee, its employees, agents, contractors, and current or potential lenders or investors full and complete access to the Property to conduct the Survey, and evaluate, conduct and perform such field inspections, pre-construction work, invasive soil and water testing, environmental audits, engineering and boundary surveys, topographical, structural and geo-technical tests, and such other tests and inspections (collectively, the "Investigations") that Optionee may deem necessary or advisable in its sole discretion, upon Optionee providing at least twenty-four (24) hours' prior notice to Owner (and in the case of invasive soil and water testing, Optionee shall provide Owner no less than two (2) business days' prior notice of such testing). Optionee has the right, but not the obligation, to perform the Investigations. Owner agrees to cooperate fully with Optionee in assisting Optionee to complete its Investigations. Optionee shall have the right to use for ingress and egress to the Property any land or easement rights owned by or under the control of Owner to access the Property. With respect to this right of entry, the parties agree as follows: (i) Optionee and Optionee's employees, agents and contractors shall have access to the Property twenty-four (24) hours a day, seven (7) days a week, after providing Owner prior notice as described above and at no additional charge; and (ii) Optionee agrees to be responsible for any and all costs related to the Investigations, including installation on and operation and removal of equipment on the Property. Owner consents and agrees that Optionee may make and file applications, at Optionee's sole cost and expense, on Owner's behalf to any such public or quasi-public authority having jurisdiction whose approval may be necessary or advisable to enter the Property to perform said Investigations and to take any actions in furtherance of Optionee's ability to proceed with



timely implementation of the Project. Owner shall, within five (5) days after Optionee's request, execute any such application or other documentation as required by such authority or as would reasonably assist Optionee. In the event Owner fails to execute such documentation within such time, Owner hereby constitutes and appoints Optionee as Owner's attorney-in-fact to execute any such documentation.

7. **Taxes and Utilities.** Owner shall (i) pay directly to the taxing authority any and all real property taxes and assessments, or installments thereof which are levied, assessed, charged or imposed against the Property, including, without limitation, the Premises or any other part of the Property, during the Option Period, before the date on which payment of such taxes or assessments would be deemed delinquent by the taxing authority and interest would start accruing; and (ii) pay directly to the utility companies all utilities and services furnished to the Property (collectively, "**Taxes and Utilities**"). Upon request of Optionee and within ten (10) business days of said request, Owner shall provide Optionee proof of payment of the Taxes and Utilities by delivering a copy of the invoice, marked paid in full, from the appropriate taxing or utility authority; provided, however, that Taxes and Utilities with respect to any portion of the Land exercised pursuant to Section 3 shall be paid in accordance with the Lease governing such portion of the Land. If Owner has not paid the Taxes and Utilities as provided for above, Owner shall be in default and Optionee shall have the right, but not the obligation, to pay the Taxes and Utilities amount due, plus interest and penalties, which payment shall not cure Owner's default or affect or alter Optionee's remedies. Optionee shall have the right to offset payment of any monies payable to Owner, in the amount of Taxes and Utilities, plus interest and penalties that Optionee has paid.

8. **Owner's Representations and Warranties.** Owner makes the following representations and warranties, which shall be true as of the Effective Date, the date the Option

is exercised by Optionee, and shall survive the expiration or termination of this Agreement:

(a) Other than Owner, there are no other persons or entities having legal or beneficial title or ownership interests in and to the Property or possessory or use rights to the Premises. Owner has the full legal right, power and authority, without the consent of any additional party or parties, to enter into this Agreement and to perform, its obligations hereunder. The execution and delivery of this Agreement and the consummation of all transactions and performance of all obligations contemplated hereby have been duly authorized and will not result in a breach or violation of, or a default under, any lease (or other document) by which Owner or its properties are bound, or any law, administrative regulation, or court decree in a manner which could materially and adversely affect the rights of Optionee. The person executing this Agreement on behalf of Owner has full power and authority to bind Owner to the obligations of Owner set forth herein, and upon execution and delivery of the same, this Agreement will constitute a valid and binding instrument enforceable in accordance with its terms.

(b) Owner has complied with and is now complying with and the Property is complying with all Environmental Laws (defined below) with respect to the Property. Owner has obtained all permits and licenses required for the Property by any applicable Environmental Laws and the Property is in compliance with the requirements of any such permits and licenses and all such permits and licenses remain in full force. Owner has or will within ten (10) days of the Effective Date, provide to Optionee copies of any and all environmental reports for the Property. There are no past, pending or threatened environmental claims against the Property, or against Owner with respect to the Property. To Owner's knowledge (i) Hazardous Substances (defined below) have not at any time been generated, used, or stored on, or transported to or from, or released or disposed of on the Property, and (ii) there are not now and never have been any underground storage tanks located on or under

the Property and there is no asbestos contained in, forming part of, or contaminating any part of the Property.

"Environmental Laws" means, any federal, state or local laws, ordinances, statutes, codes, rules, regulations, orders or decrees now or hereinafter in effect relating to (A) pollution, (B) the protection of human health or the environment, (C) the treatment, storage or disposal of Hazardous Substances, or (D) the emission, discharge or release of Hazardous Substances into the environment.

"Hazardous Substances" as used in this Agreement shall mean any hazardous or toxic material, substance or waste, pollutant or contaminant, including, but not limited to: (i) any hazardous substance or hazardous waste under any Environmental Laws; (ii) crude oil or any fraction thereof and all petroleum products or wastes; (iii) polychlorinated biphenyls; (iv) trichloroethylene, tetrachloroethylene, perchloroethylene and other chlorinated solvents; (v) lead; (vi) asbestos or asbestos containing materials; (vii) flammable substances or explosives; or (ix) radioactive materials.

(c) (i) The Property is not in violation of any applicable federal, state, local or other laws, regulations or codes (the "Laws"); (ii) Owner has not received notice of or been served with any pending or threatened litigation, condemnation, foreclosure or deed in lieu thereof or any violations of any Laws with respect to the Property or have any knowledge of the same or of the threat of the same; and (iii) the Property has lawful and valid access to and from existing public rights of way, pedestrian pathways, roads, sewer, electrical, other utility services and all utilities which serve the Property enter the Property through adjoining public streets or, if they pass through an adjoining private tract, do so in accordance with valid public easements or recorded private easements, which easement(s) shall be sufficient for the purposes of Optionee.

(d) There are no liens on or over the Property other than liens for monetary obligations for which Owner shall obtain a SNDA pursuant to Section 15.

(e) Owner has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of any voluntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all or substantially all of its assets; or (iv) suffered the attachment or other judicial seizure of all or substantially all of its assets.

From the Effective Date and throughout the Option Period, Owner shall promptly notify Optionee in writing of any changes affecting any of the foregoing representations and warranties.

9. Owner's Covenants. Owner hereby covenants and agrees that from and after the Effective Date, throughout the Option Period and, if the Option is exercised by Optionee, thereafter during the period up to and including the Closing:

(a) Owner shall not encumber the Property except that Owner shall have the right to encumber the Property with monetary obligations so long as any and all such monetary obligations are subject and subordinate to this Agreement and the rights of Optionee hereunder and Owner shall obtain a SNDA pursuant to Section 15 for any monetary obligations existing prior to the Effective Date.

(b) Optionee shall have the right to apply for, at Optionee's expense, applications for land use entitlements, environmental approvals and permits, site plans, and subdivision or minor land division requests and parcel maps. Owner shall cooperate with Optionee in Optionee's efforts to obtain such approvals by executing such documents as are reasonably necessary.

(c) Owner shall materially comply with all Laws applicable to the Property.

(d) Owner agrees not to grant or permit any easement, lease, license, right of access or other possessory right in the Property to any third party without the prior written consent of Optionee.



(e) Owner will not commit waste on the Property or otherwise materially change the Property.

(f) Owner shall make all payments required under any loan secured by a mortgage or deed of trust encumbering the Property and pay all Taxes and Utilities before any of the same become delinquent.

10. **Loss, Damage or Condemnation.** Loss or damage to the Property of any kind, including by fire, flood, earthquake, accident, or due to an act of God shall be at the risk of the Owner until the Closing, and in the event that such loss or damage occurs, the Optionee may, in its sole discretion, either elect to accept conveyance of the Premises pursuant to the Lease, in which case the Option Payments shall be pro-rated based upon the portion of the Premises that is conveyed, or terminate this Agreement by delivering written notice thereof to Owner, and the Option Payments (other than the Initial Consideration), it has received, shall be returned to Optionee within ten (10) days of delivery of notice to Owner of said termination. If before the Closing, proceedings are commenced or threatened by exercise of a power of eminent domain of the Property, or any portion thereof that includes the Premises (the "Condemnation Proceedings"), Optionee shall have the right, in its sole discretion, to terminate this Agreement by delivering written notice thereof to Owner, and the Option Payments (other than the Initial Consideration), it has then received, shall be returned to Optionee within ten (10) days of delivery of notice to Owner of said termination. If Optionee elects not to terminate this Agreement in the event of such Condemnation Proceedings, then the Option Payments shall be pro-rated based upon the portion of the Premises that is not subject to the Condemnation Proceedings.

11. **Indemnification.**

(a) **Indemnification by Owner.**

Owner shall indemnify, defend and hold harmless Optionee, its affiliates, officers, directors, partners, members, shareholders, agents and employees and their successors and

assigns from and against any and all losses, liabilities, damages, claims, judgments, orders, penalties, costs, expenses (including, without limitation, reasonable attorneys' fees) for personal injury or property damage ("Losses") to the extent resulting from (i) the negligent or willful misconduct of Owner, its affiliates, officers, directors, partners, members, shareholders, agents, employees, invitees, licensees and their successors and assigns (each an "Owner Party" and collectively "Owner Parties"; (ii) the material breach by any Owner Party of any obligation, representation or warranty arising under this Agreement; (iii) any actions, obligations or liabilities of any Owner Party in respect of the Property before the date of the Closing; (iv) any Hazardous Substances existing in, on or under the Property as of the Effective Date or arising as a result of any action or omission of an Owner Party prior to or during the Option Period; and (v) the generation, use, storage, management, recycling, or disposal of any Hazardous Substances in or about the Property by any Owner Party prior to or during the Option Period.

(b) **Indemnification by Optionee.**

Optionee shall indemnify, defend and hold harmless Owner, its affiliates, officers, directors, partners, members, shareholders, agents and employees and their successors and assigns from and against any and all Losses to the extent resulting from (i) the negligent or willful misconduct of Optionee, (ii) the material breach by Optionee of any obligation, representation or warranty arising under this Agreement; and (iii) injuries, property damage and breaches of Optionee's obligations under this Agreement by Optionee, its employees, affiliates, officers, or agents, caused by the entry upon, or any inspections, tests or examinations performed on the Property by Optionee, its employees or agents in connection with any Investigations. Notwithstanding the foregoing, Optionee shall have no liability or obligations in connection with any pre-existing or latent defects or conditions with respect to the Property, including, without limitation, the presence, discovery or disturbance of any Hazardous Substances on, in or under the Property.

(c) Survival. This Section 11 shall survive the expiration or termination of this Agreement.

12. Insurance. Optionee may, in its sole discretion, elect to maintain commercial general liability insurance either through insurance policies or self-insured retentions. Optionee agrees that such insurance shall be in the following amounts: comprehensive general liability with liability limits of not less than \$1,000,000 for injury to or death of one or more persons in any one occurrence with an annual aggregate limit of no less than \$2,000,000. Optionee shall maintain adequate casualty insurance for damage and destruction to its improvements situated on the Property.

13. Assignment. Optionee may not sell, transfer or assign this Agreement without the prior consent of Owner, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Optionee may in its sole discretion assign this Agreement without the consent of Owner to (i) any company directly or indirectly controlling, controlled by or under common control with Optionee; (ii) any entity engaged in a joint venture, partnership or similar arrangement with Optionee, an affiliate, subsidiary or parent of Optionee, or a subsidiary or affiliate of Optionee's parent; (iii) any person or entity purchasing or otherwise succeeding to all or substantially all of the assets of Optionee; (iv) a successor entity in a merger or acquisition transaction; (v) to any other company, provided the net worth of such company at the time of the proposed transfer is equal to or greater than the Optionee at the time of the proposed transfer; or (vi) to any person or entity that provides construction and/or permanent financing of the Project (including without limitation, debt, tax equity and/or structured financing) by way of direct or collateral assignment to such party(ies) in connection with or in support of such financing. If consent of Owner is not required as provided for herein or if prior consent of Owner is obtained, then in such event Optionee shall be relieved of its obligations hereunder provided that the assignee assumes all of the obligations of Optionee under this Agreement.

Owner shall not have any right to assign its rights and obligations under this Agreement without Optionee's prior written consent, not to be unreasonably withheld, conditioned or delayed.

14. Termination.

(a) Default. Each of the following events shall constitute an event of default by the applicable party and shall permit the non-defaulting party to terminate this Agreement and pursue the remedies described below, which, as to Owner, shall consist solely of the remedies described in Section 14(b) below, and, as to Optionee, shall consist of all other appropriate remedies including specific performance of Owner's obligations under this Agreement and the Lease (provided the Option is exercised by Optionee) or to terminate this Agreement and recover all Option Payments (other than the Initial Consideration) paid to Owner in addition to Optionee's other damages.

(i) The failure of Optionee to pay amounts required to be paid hereunder when due, where such failure continues for thirty (30) days after Optionee has received written notice of such failure from Owner;

(ii) The failure of either party to perform any of the other terms, agreements or conditions set forth in this Agreement, where such failure continues for forty-five (45) days (or such longer period required to cure such failure, not to exceed ninety (90) days), after receipt of written notice from the other party; or

(iii) A party files for bankruptcy or has an involuntary petition in bankruptcy or a request for appointment of a receiver filed against it, where such involuntary petition or request is not dismissed within ninety (90) days after filing.

(b) Owner Remedies - Liquidated Damages. UPON AN EVENT OF DEFAULT BY OPTIONEE, OWNER SHALL BE ENTITLED TO RETAIN THE OPTION PAYMENTS IT HAS THEN RECEIVED, AS



LIQUIDATED DAMAGES FOR SUCH DEFAULT OF OPTIONEE, AND IN SUCH EVENT, OPTIONEE SHALL HAVE NO FURTHER RIGHT WHATSOEVER TO LEASE THE PREMISES AND OWNER SHALL HAVE NO RIGHT TO SEEK ANY FURTHER DAMAGES OR REMEDY, AT LAW OR IN EQUITY. THE PARTIES AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES THAT WOULD BE SUFFERED BY OWNER AS A RESULT OF ANY SUCH DEFAULT BY OPTIONEE, AND THAT UNDER THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, THE LIQUIDATED DAMAGES PROVIDED FOR IN THIS SECTION REPRESENT A REASONABLE ESTIMATE OF THE DAMAGES WHICH OWNER WILL INCUR AS A RESULT OF ANY SUCH DEFAULT BY OPTIONEE. SUCH RETENTION OF THE OPTION PAYMENTS BY OWNER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO OWNER AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY.

(c) Termination by Optionee Absent Default by Owner. If Optionee determines, in its sole and absolute discretion, that the Land is unsuitable or undesirable for leasing by Optionee, Optionee shall have the right to terminate this Agreement by giving written notice thereof to Owner and this Agreement shall terminate on the date specified in Optionee's written notice. If the Agreement is terminated during the Option Period pursuant to the preceding sentence, then neither party shall have any further rights or obligations hereunder; provided, however, that Owner shall retain the Initial Consideration and all Option Payments it shall have received hereunder prior to the date of termination of the Option Agreement and any provisions hereof that expressly survive termination of this Agreement shall remain in effect.

15. Subordination; Non-Disturbance. Within thirty (30) days of Optionee's request, Owner shall deliver to Optionee a subordination,

non-disturbance and attornment agreement(s), in form and substance reasonably acceptable to Optionee (each, a "SNDA") from the current holder(s) of any deed of trust, mortgage or other lien encumbering the Property, whereby each existing deed of trust, mortgage or other lien is subordinated to this Agreement. Such SNDA shall be recorded in the official records of the county where the Property is located. If Owner fails to timely obtain the SNDA(s), then Optionee shall have the right to terminate this Agreement forthwith and receive a full refund of any and all amounts paid to Owner hereunder, including, but not limited to, all Option Payments (other than the Initial Consideration).

16. Notices. All notices, approvals, disapprovals or elections required or permitted to be given under this Agreement shall be in writing and shall be (i) delivered personally; (ii) mailed by certified or registered mail, return receipt requested; (iii) sent by email transmission; (iv) sent by facsimile transmission; or (v) sent by Federal Express or other professional carrier, to the parties at the addresses listed in the Basic Option Provisions or at such other addresses as shall be designated by Optionee or Owner in writing. Except as expressly set forth in this Agreement, notices shall be deemed given upon delivery or tender of delivery to the intended recipient; provided that notice sent by email or facsimile shall only be deemed received when both (a) the sender has electronic confirmation that it was sent to all parties (and has retained a printed confirmation of the delivery to the applicable fax number or email address) and (b) at least one addressee entitled to notice under this Section 16 for the applicable party has acknowledged receipt of the transmission. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

17. Miscellaneous.

(a) Attorneys' Fees. In the event of any action between the parties hereto for enforcement or interpretation of any of the terms or conditions of this Agreement, the prevailing party in such action shall be entitled to recover

its reasonable attorneys' fees actually incurred, together with its other reasonable out-of-pocket costs and expenses, including expert witness fees, accounting and other professional fees.

(b) Waiver of Jury Trial. EACH PARTY HERETO WAIVES, TO THE FULL EXTENT PERMITTED BY LAW, THE RIGHT TO A JURY TRIAL IN ANY LITIGATION CONCERNING THIS AGREEMENT OR ANY DEFENSE, CLAIM, COUNTERCLAIM, CLAIM OF SET-OFF OR SIMILAR CLAIM OF ANY NATURE.

(c) Confidentiality. Owner will maintain in strict confidence, for the sole benefit of Optionee, the existence and the terms of this Agreement and the transactions contemplated herein, provided, however, Owner may disclose this Agreement and the transactions contemplated herein to Owner's affiliates, subsidiaries, attorneys, consultants or other agents or professional advisors, or as required by law.

(d) Counterparts. This Agreement may be executed in counterparts. All executed counterparts shall constitute one agreement, and each counterpart shall be deemed an original. The parties hereby agree signatures transmitted by facsimile or email shall be legal and binding and shall have the same full force and effect as if an original of this Agreement had been delivered and hereby waive any defenses to the enforcement of the terms of this Agreement based on the foregoing forms of signature.

(e) Time Periods. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to the next business day.

(f) No Waiver. The failure of either party to require strict performance by the other party of any provision of this Agreement will not be considered a waiver of any other provision, nor prevent any party from enforcing that or any other performance at any time thereafter.

(g) Further Assurances. The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to carry out the intent and purposes of this Agreement.

(h) Governing Law. This Agreement is made pursuant to, and shall be construed and enforced in accordance with, the laws of the state of New York.

(i) Amendments; Entire Agreement. This Agreement contains the entire agreement between the parties and is intended by the parties to set forth their entire agreement with respect to the subject matter hereof, and any agreement hereafter made shall be ineffective to change, modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. Owner and Optionee agree that all prior or contemporaneous oral or written agreements between or amongst themselves or their agents are merged in or revoked by this Agreement.

(j) Partial Invalidity. If any term or provision of this Agreement is, to any extent, determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(k) Successors and Assigns. This Agreement, and the rights and obligations of the parties hereto, shall be binding upon and inure to the benefit of the parties and their respective successors, heirs, executors, administrators and permitted assigns.

(l) Interpretation. The parties acknowledge that their attorneys have reviewed and revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall



not be employed in the interpretation of this Agreement or any amendments or exhibits hereto. Each party was represented by legal counsel in the negotiation of this Agreement.

(m) Survival of Terms. All covenants, representations and warranties contained in this Agreement shall survive Closing. Those provisions in this Agreement which by their terms are intended to be or must be performed in whole or in part after the Closing or after termination of this Agreement shall survive Closing and the termination of this Agreement.

(n) Headings. The headings herein are inserted only for convenience and shall have no effect in interpreting the meaning of any provision.

(o) Time is of the Essence. Time is of the essence in this Agreement and each and every provision of this Agreement.

(p) Memorandum of Option. Contemporaneously with the execution of this Agreement, the parties shall execute and acknowledge a Memorandum of Option Agreement in the official records of the county where the Property is located (the "Memorandum") in a form reasonably acceptable to Owner and Optionee. Optionee may record the Memorandum at any time after the Effective Date.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, and intending to be bound hereby, the parties hereto have executed this Agreement on the date written above,

**"Owner"**

Johnson Realty,  
a New York partnership

By: [Signature]  
Name: Gary Johnson  
Title: Partner

By: [Signature]  
Name: Kurt B. Thompson  
Title: Partner

By: [Signature]  
Name: Anne Somerville  
Title: Partner

By: [Signature]  
Name: Gail DeLeonio  
Title: Partner

By: [Signature]  
Name: Peter B. Johnson  
Title: Partner

By: [Signature]  
Name: David L. Johnson  
Title: Partner

By: [Signature]  
Name: Anthony E. Pallasciano  
Title: Partner

**"Optionee"**

First Wind Solar Portfolio, LLC,  
a Delaware limited liability company

By: [Signature]  
Name: Arthur J. Snell  
Title: Assistant Secretary

**LEGAL DEPT.**

Approved as to Form - Sun Edison LLC - Legal Dept.

Initials: CRM

Date: 6/26/2015