

1 **CITY OF SANTA FE, NEW MEXICO**

2 **ORDINANCE NO. 2010-20**

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4  
5 **AN ORDINANCE**

6 **APPROVING A LEASE BETWEEN THE CITY OF SANTA FE AND NVT LICENSES,**  
7 **LLC, FOR APPROXIMATELY 12.555 ACRES OF CITY-OWNED LAND LOCATED AT**  
8 **THE SANTA FE MUNICIPAL AIRPORT TO BE USED FOR THE CONSTRUCTION OF**  
9 **A PHOTOVOLTAIC ELECTRICAL SYSTEM BENEFITING THE WASTEWATER**  
10 **MANAGEMENT DIVISION.**

11  
12 **BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:**

13 Section 1. The City of Santa Fe hereby approves a certain lease dated August 25,  
14 2010, entered into between the City of Santa Fe and NVT Licenses, LLC, which is attached  
15 hereto as Exhibit "A" and made a part hereof, for approximately 12.555 acres of land located at  
16 the Santa Fe Municipal Airport, which expires on August 24, 2030, (the "Lease Agreement").

17 Section 3. This Ordinance shall be effective forty-five days after the date of  
18 adoption, unless a referendum is held pursuant to Section 3-54-1 NMSA 1978.

19 Section 4. This Ordinance shall be published as required by Section 3-17-3 NMSA  
20 1978 and such publication shall contain the following information:

21 A. Property to be Leased. The City of Santa Fe shall lease to NVT Licenses, LLC,  
22 12.555 acres more or less of land located at the Santa Fe Municipal Airport, and more fully  
23 described under the Lease Agreement.

24 B. Market value of the Leasehold Premises. The appraised value of the Leasehold  
25 premises is ninety-one thousand five hundred and forty dollars (\$91,540).

1 C. Payment terms of the Lease. The rental payment for the leasehold premises shall  
2 be in an amount which will comply with applicable Federal Aviation Administration grant  
3 assurances on economic self sustaining rate structures. The lessee shall be responsible for the  
4 cost of survey, appraisal and other closing costs.

5 D. The Lessee is NVT Licenses, c/o SUNEDISON, 12500 Baltimore Avenue,  
6 Beltsville, MD 20705.

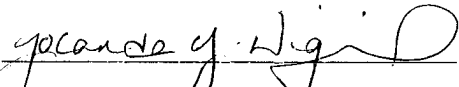
7 E. Purpose of the Lease. The purpose of the lease is for the lessee to use and  
8 occupy the premises for construction of a photovoltaic electrical system benefiting the  
9 Wastewater Management Division and other related purposes more fully described under the  
10 Lease Agreement.

11 PASSED, APPROVED, and ADOPTED this 25<sup>th</sup> day of August, 2010.

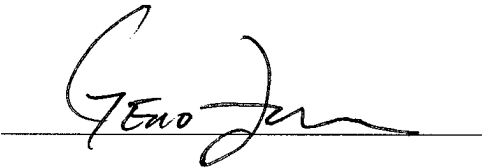
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14 DAVID COSS, MAYOR

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16 ATTEST:

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19 YOLANDA Y. VIGIL, CITY CLERK

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21 APPROVED AS TO FORM:

22  
23 

24 GENO ZAMORA, CITY ATTORNEY

25 mdb/cao/jep&mdb/ordinances2010/Airport Lease (NVT Licenses)

SANTA FE MUNICIPAL AIRPORT  
LEASE AGREEMENT  
NVT LICENSES, LLC

**THIS LEASE AGREEMENT**, is made and entered into by and between the CITY OF SANTA FE, NEW MEXICO, a municipality and political subdivision of the State of New Mexico, hereinafter (the "Lessor"), and NVT LICENSES, LLC, a Delaware limited liability company, hereinafter (the "Lessee"). The Effective Date of this Lease Agreement shall be the date when it is executed by the Lessor.

**WHEREAS**, the Lessor owns and operates an airport known as the Santa Fe Municipal Airport ("Airport") and is desirous of leasing to the Lessee certain premises and facilities at the said Airport; and

**WHEREAS**, the Lessee is a company desirous of constructing and maintaining a photovoltaic system (defined below) for the purpose of supplying electrical energy output; and

**WHEREAS**, the Lessee is desirous of engaging in the business of renting space to others; and

**WHEREAS**, both the Lessor and Lessee have the right and power to enter into this Lease Agreement; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter contained the parties agree as follows:

1. **PREMISES** Lessor does hereby lease unto the Lessee and Lessee does hereby lease from Lessor the exclusive rights to the described Premises and facilities at the Airport, the lot designated as "Site Plan" on the City of Santa Fe Exhibit prepared by Sun Edison LLC., more particularly described on Exhibit "A" attached hereto, containing approximately 12.555 acres (546,896 square feet) more or less, of which 9.154 acres (398,748 square feet) more or less is useable, together with rights of access, ingress and egress thereto.

2. **USE OF THE PREMISES AND RIGHT TO CONSTRUCT**

A. Lessee shall use the Premises solely for the purpose of constructing, operating, maintaining and removing a solar electric generating facility, together with certain other related improvements and appurtenant equipment and defined as the "System" in the Solar Power Services Agreement or "SPSA" between Lessor and Lessee (and hereinafter referred to as the "System"). No other commercial business activities of any kind shall be conducted on the leasehold by Lessee or its sub-lessees. No vehicles of any type shall be parked on the Premises except those used for construction and servicing of the System and transportation to and from the Premises. No long term parking or storage of any other vehicle shall be permitted unless specifically approved in writing as an exception by Lessor. Lessor reserves the right to revise vehicle parking provisions of this Article 2, Paragraph A at any time Lessor may deem necessary.

B. Lessee shall have the right to erect, operate and maintain the System upon said Premises, provided such buildings are consistent with the Airport Master Plan (as amended or may be amended in the future), Airport Minimum Standards Ordinance (as amended, or may be amended in the future), the Building Code requirements of the New Mexico Construction Industries Division, and any City of Santa Fe or Santa Fe County ordinance now or hereafter in effect. At all times while this Lease Agreement is in force and effect, title to the System (including without limitation all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery

and equipment installed therein), shall belong solely to Lessee. The System and the renewable energy (including environmental credits and related attributes) produced by the System are personal property and shall remain the personal property of Lessee, shall not be considered the property (personal or otherwise) of Lessor and shall not attach to or be deemed a part of, or fixture to, the land comprising the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code, as adopted in Chapter 55, Article 9 NMSA 1978. Lessee shall have the right to remove the System at any time during the Term. Upon expiration of this Lease Agreement, as it may be amended in the future, title to such construction, as remains, shall be determined in accordance with the terms and conditions of the SPSA.

C. Lessee shall, at its own expense, prepare plans and specifications for the total project which shall be submitted to and approved by the Airport Manager prior to any construction commencing. Lessor assumes no liability or responsibility for any defect in any structure constructed from such plans or specifications.

D. Lessor shall provide reasonable easements for egress, ingress and utilities to serve the Premises.

E. Lessee must receive prior written approval from Lessor and the Federal Aviation Administration for any and all buildings, structures and improvements to be placed on the Premises. Lessee shall provide a schedule for completion dates of all improvements at the time plans for construction or alteration are presented to the Lessor for review and approval, which approval will not be unreasonably withheld, conditioned or delayed.

F. Upon receiving consent from Lessor, whose consent shall not be unreasonably withheld, conditioned or delayed Lessee shall have the right to remodel, remove, demolish or destroy any future structures or improvements constructed by Lessee on the Premises without compensation to Lessor, so long as the Premises are left in a safe and sightly condition.

G. Lessee shall have access to the Premises through the existing access road along Paseo Real and as depicted in Exhibit "B". Lessee shall construct and maintain a security gate on the existing access road.. During the Term, at no cost to Lessor and subject to approval by the Airport Manager, Lessee has the right to relocate the gate or construct additional gates providing access to Paseo Real. All gates shall remain secured at all times. Lessee shall not interfere in any way with any use of these security gates (i) by vehicles or personnel, provided that said use is authorized by the Airport Manager, or his designee, or (ii) by emergency vehicles.

H. Lessor covenants, warrants and represents that Lessor alone has the full right to lease the Premises for the Term and as set forth in this Lease Agreement and that possession of the Premises will be delivered to Lessee as of the date hereof, subject to the terms and conditions of this Lease Agreement.

### **3. TERM OF LEASE**

A. Term. This Lease Agreement shall begin on the Effective Date and shall continue for 20 years from the Commercial Operation Date ("Initial Term"), unless and until terminated earlier pursuant to the terms of this Lease Agreement. The Initial Term and Renewal Term (defined below) as the same may be sooner terminated or extended both as specifically provided in this Lease Agreement, are referred to herein, collectively as the "Term." Upon expiration of the Term or any extension thereof or upon cancellation of this Lease Agreement, Lessee shall peacefully surrender and

vacate the Premises in accordance with the terms and conditions of this Lease Agreement and the SPSA.

B. Option to Renew. The Lessor hereby grants to Lessee the option to renew this Lease Agreement (a "Renewal Option") for four (4) additional five (5) year terms (a "Renewal Term"). The Annual Rent for each Renewal Term shall be determined in accordance with Article 5, Paragraph E. The terms and conditions for each Renewal Option shall be the same terms and conditions as are set forth in this Lease Agreement, excluding the amount of the Annual Rent. Provided, however, that three (3) months prior to the expiration of the Initial Term or at the time that a Renewal Option is exercised, this Lease Agreement will be amended to conform to all federal and other regulations and grant requirements related to the Airport development and operation. Lessee shall notify Lessor in writing of its intention to exercise a Renewal Option not less than three (3) months before the expiration of the Renewal Term or extension of a Renewal Option; otherwise, the option shall be deemed to have been waived. At expiration of this Lease Agreement, Lessee shall, at Lessor's sole discretion, be afforded the opportunity to negotiate and enter a new Lease Agreement with the City of Santa Fe for use of the Premises.

C. Termination. Upon termination of this Lease Agreement by either party, the Lessee's rights to use the Premises shall cease and the Lessee shall peacefully vacate the Premises. Subject to Lessor's exercise of its purchase option under Section 2.3 of the SPSA, upon the expiration or earlier termination of this Lease Agreement, Lessee shall, at Lessee's expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than sixty (60) days after the expiration or termination date. The Premises shall be returned to its original condition in accordance with Section 2.5 of the SPSA. Lessee shall leave the Premises in neat and clean order. If Lessee fails to remove or commence substantial efforts to remove the System by such agreed upon date, Lessor shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition, in accordance with Section 2.5 of the SPSA, at Lessee's reasonable cost. Termination by the Lessor shall not relieve the Lessee of liability for any damages sustained by the Lessor caused by Lessee's breach of this Lease Agreement.

#### 4. HOLDOVER

In the absence of a new lease agreement entered into before the expiration of the Renewal Term under this Lease Agreement or any extension thereof, Lessee shall be allowed to hold over for a period not to exceed sixty (60) days from the expiration date of the Renewal Term under this Lease Agreement or the expiration of any Renewal Option period. Holding over by the Lessee after the expiration of the Renewal Term or any Renewal Option period under this Lease Agreement, whether with or without the consent of the Lessor, shall not operate to extend or renew this Lease Agreement. Any such holding over shall be construed as a tenancy from month to month at the rents set forth in this Lease Agreement under the terms herein.

#### 5. RENT AND FEES

The Lessee agrees to pay to the Lessor, at the office of the Airport Manager, at the Santa Fe Municipal Airport, or at such place as the Lessor may designate from time to time, for the use of the Premises the following rents and fees:

A. Annual Rent. Lessee shall pay to Lessor an annual rental fee in accordance with the amounts shown on Schedule 1, as attached hereto and incorporated herein, per calendar year (or partial calendar year) for the Premises.

B. Schedule of Payments for Annual Rent. The rentals as provided in Article 5, Paragraph A shall be payable to the Lessor, on an annual basis on the first day of the first month of the

year. Upon the Effective Date Lessee shall pay to Lessor the rental fee of \$9,154 pro-rated for the remainder of 2010. Provided the Commercial Operation Date occurs in 2010, the rental fee (i) for 2011 through 2031 shall be the amounts shown as Years 1 through 20 in Schedule 1; and (ii) for the Renewal Terms, provided Lessee exercises its Renewal Option, shall be the amounts shown as Years 21 through 40. In the event the Commercial Operation Date occurs in 2011, the rental fee (i) for 2011 through 2032 shall be the amounts shown as Years 1 through 21 in Schedule 1; and (ii) for the Renewal Terms, provided Lessee exercises its Renewal Option, shall be the amounts shown as Years 22 through 41.

C. Late Payment. If Lessee fails to pay the Annual Rent and such failure shall continue for a period of thirty (30) days or more after written notice from Lessor to Lessee that the same is due and payable, then Lessor, without further notice to Lessee, shall have the right, but not obligation, to offset and deduct the amount of Annual Rent then due, including interest, against payment owed Lessee under Section 6.1 of the SPSA as reflected on the most recent billing invoice Lessor has received from Lessee pursuant to Section 6.2 of the SPSA.

D. Security and Fire Protection Fees. Lessor reserves the right to impose fair and equitable fees for Security and Fire Protection should such services be provided by Lessor.

E. Late Payment Penalty. If the fixed rental payment as provided in Article 5 Paragraph A, is not received within the twenty-five (25) days of its due date, the Lessee shall pay a finance charge of 1-1/2% per month (18% annually) on such past due payment for each month or partial month thereafter that any payment due is not made.

F. Adjustment of Annual Rent for Renewal Terms. For each Renewal Term the Annual Rent shall be paid in accordance with Paragraph 5 B, above, and Schedule 1.

## 6. INSURANCE

A. Worker's Compensation and Employer's Liability. The Lessee shall comply with and provide insurance commensurate with the provisions of the New Mexico Worker's Compensation Act, the Subsequent Injury Act, and the Occupational Disease Disablement Law. Such insurance shall include coverage permitted under Section 52-1-10, NMSA 1978, for safety devices. The Lessee shall require any subcontractor to provide such coverage, or qualify as a self-insured, for all the latter's employees. The Lessor, its officers or employees shall not be responsible for any claims or actions caused by the Lessee's failure to comply with the provisions of this subparagraph. It is expressly understood that employees of the Lessee are not Lessor's employees for any purpose.

B. No Waiver. Nothing in this Lease Agreement shall be deemed a waiver of the limitations on Lessor's liability pursuant to the New Mexico Tort Claims Act.

C. Liability. The Lessee shall procure and maintain a comprehensive general liability insurance policy, for bodily injury, including death, and property damage in such amounts that are not less than the maximum liability of public agencies as set forth in the New Mexico Tort Claims Act, N.M. Stat. Ann. 41-4-1, et seq. (1978) now constituted or hereafter amended. Said policies of insurance must include coverage for Premises, operations and the Lessee's liability to the Lessor hereunder. The Lessor shall be named as an additional insured on the general liability and property coverage insurance policies. The parties acknowledge that the certificate of insurance for

General Liability coverage will be in the amount of Five Million Dollars (US \$5,000,000).

D. Lessee's Insurance Certificate. Lessee, upon request, shall furnish current certificates evidencing that the insurance required by Paragraph 6(A), is being maintained. Lessee's insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the other party thirty (30) days written notice before the insurance is cancelled or materially altered.

E. Additional Insureds. Lessee's insurance policy shall be written on an occurrence basis and shall include the other party as an additional insured as its interest may appear.

F. Insurer Qualifications. AU insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

G. Binders. A binder for all insurance policies required by this Lease Agreement shall be provided to Lessor at the time of the execution of this Lease Agreement. Certificates of Insurance shall be delivered to the Airport Manager within thirty (30) days of the date of this Lease Agreement. The policies provided herein shall not be subject to cancellation without providing Lessor thirty (30) days written notice thereof. Lessee shall promptly replace any policies terminated or canceled and shall insure no gaps in coverage.

H. Policy Cancellations. Policies shall provide that 30 days written notice shall be given to the Airport Manager before a policy is canceled, materially changed or not renewed, except, however, Lessor acknowledges that notification of cancellation of Lessee's Workers' Compensation/Employer Liability coverage may only be given 7 days in advance. A certificate or policy which states that failure to give such notice imposes no obligation on the insurance company is unacceptable to this Lease agreement. Cancellation or other termination of any insurance policy issued in compliance with this section shall automatically terminate this Lease Agreement, unless another policy has been filed and approved pursuant to this section and shall be in effect within 45 days of the date of written notice to Lessee of such default.

I. Increase in Coverage. Lessor may require an increase in coverage in the event the maximum amount in the New Mexico Torts Claim Act are raised by the New Mexico State Legislature or by judicial mandate.

## 7. HOLD HARMLESS

Lessee agrees to defend, indemnify and hold harmless Lessor from loss from each and every claim and demand of whatever nature, to the extent arising out of, resulting from or caused by any person or persons, for any wrongful, careless or negligent act or omission of Lessee or Lessee's employees, members and guests, and from all losses and damages by reason of such acts or omissions. Lessee shall not, however, be required to reimburse or indemnify Lessor for any loss to the extent such loss is due to the negligence or willful misconduct of Lessor.

## 8. CANCELLATION BY LESSOR

Lessor may cancel this Lease Agreement by giving Lessee written notice of any alleged default under or breach of the Lease Agreement and thirty days within which to cure any default or

breach upon or after the happening of any of the following events:

A. Cancellation for Non-Payment. If the Lessee shall default in any payment obligations contained herein, and the default shall continue for thirty (30) days after the effective date of written notice thereof to the Lessee, given by the Lessor in accordance with the provisions of this Lease Agreement, and Lessee fails to credit Lessor's offset and deduction of Annual Rent, including interest, pursuant to Article 5, Paragraph B of this Lease Agreement against the payment owed Lessee under Section 6.1 of the SPSA as reflected on the most recent billing invoice Lessor has received from Lessee pursuant to Section 6.2 of the SPSA then the Lessor shall have the option to declare the Term ended, without forfeiture, waiver or release of the Lessor's rights to any sum of money due, and to recover and enjoy possession of the Premises, whether with or without process of law. In the event of cancellation for non-payment, Lessor may, at its option, attach a landlord's lien to any improvements on the Premises, and said improvements may not be removed from the Premises without Lessor's prior approval.

B. Cancellation for Default other than Payment.

(1) If the Lessee shall default in the performance of any terms, covenants, agreements or conditions of this Lease Agreement other than in the performance or payment obligations, as set forth above, and the default shall continue for thirty (30) days after written notice thereof to the Lessee, given by the Lessor in accordance with the provisions of this Lease Agreement, then the Lessor shall have the option to declare the Term ended, without forfeiture, waiver or release of the Lessor's rights to any sum of money due, and to recover and enjoy possession of the Premises, whether with or without process of law. However, if any default or breach may not reasonably and capably be cured within thirty (30) days after written notice thereof, and if Lessee diligently attempts to cure the default or breach, Lessee shall pay Lessor for all costs incurred by Lessor as a result of Lessee's default; and such payment shall be made promptly upon Lessee's receipt of written demand from Lessor.

(2) No waiver of default by the Lessor of any of the terms, covenants, agreements or conditions hereof to be performed, kept and observed by the Lessee shall be construed to be an act of waiver of any subsequent default of any of the terms, covenants, agreements and conditions herein contained to be performed, kept and observed by the Lessee. The acceptance of rental by the Lessor for any period or periods after a default of any of the terms, covenants, agreements and conditions herein contained to be performed, kept and observed by the Lessee, shall not be deemed a waiver of any right on the part of the Lessor to cancel this Lease Agreement for failure by the Lessee to so perform, keep or observe any of the terms, covenants, agreements or conditions of this Lease Agreement.

C. Other Cancellation. The Lessor may cancel this Lease Agreement only by giving the Lessee thirty (30) days written notice and opportunity to cure, with or without process of Law, upon or after the happening of any one of the following events:

(1) If Lessee fails to use the Premises for the purposes set forth in Article 2 Paragraph A, Lessor may declare this Lease Agreement to be terminated and to re-enter the Premises or any part thereof, with or without the process of law, to expel, remove and put out Lessee or any other persons occupying the Premises, using such force as may be reasonably necessary in doing so. Lessee shall pay all costs, including reasonable attorney's fees and expenses and court costs that may arise in enforcing the covenants, conditions and terms of this Lease Agreement.

(2) The filing by the Lessee of a voluntary petition in bankruptcy, or the institution of proceedings in bankruptcy against the Lessee and the adjudication of the Lessee as a bankrupt pursuant to such proceedings.



(3) The taking, of a court of jurisdiction, of Lessee and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act.

(4) The appointment of a receiver of the Lessee's assets.

(5) The cancellation or other termination of any insurance policy issued in compliance with this Lease Agreement shall automatically terminate this Lease Agreement, unless another policy has been filed and approved pursuant to this Lease Agreement.

(6) If the Lessee should breach any of the nondiscrimination covenants, Lessor shall have the right to terminate this Lease Agreement and to reenter and repossess said Premises and hold the same as if said Lease Agreement had never been made or issued.

(7) The Lessor terminates the SPSA in accordance with and pursuant to Section 2.2 of the SPSA, including payment of the Early Termination Fee as defined in the SPSA.

(8) The Lessor purchases the System in accordance with and pursuant to Section 2.3 of the SPSA, including payment of the Option Price.

**9. CANCELLATION BY LESSEE**

The Lessee may cancel this Lease Agreement and terminate all or any of its obligations hereunder at any time that the Lessee is not in default in the payment of any rents or fees to the Lessor pursuant to this Lease Agreement by giving the Lessor thirty (30) days advance written notice of its intentions to discontinue its business activities at the Airport.

**10. RIGHTS OF LESSOR**

Lessor reserves the right to:

A. Operate the Airport in the best interest of the public and the right, without interference or hindrance to maintain, improve, or further develop the landing area or public use facilities of the Airport as it sees fit, regardless of any protest of the Lessee and to lease additional space to other concessions at the Airport regardless of any objection of the Lessee. Notwithstanding the aforesaid, Lessor shall take all reasonable actions as necessary to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of sunlight to the System. The Lessor may relocate the Lessee at Lessor's expense if the physical development of the airport or the terminal requires relocation of the Lessee provided such relocation is done in accordance with Section 4.3(a) of the SPSA.

B. Enter upon the Premises at any reasonable time for the purpose of making any inspection it may deem expedient to the proper enforcement of any of the covenants or conditions of this Lease Agreement and any federal, state, county or city laws, ordinances, regulations, rules and codes now or hereafter in effect. Lessor will not interfere with or handle any part of the System or Lessee's equipment without written authorization from Lessee, provided, however, that Lessor shall at all times have access to and the right to observe the construction of the System or its removal. Lessor shall endeavor to give Lessee prior notice of the entry at least 48 hours in advance. Lessor may enter the Premises at any time, without prior notice, in the event of an emergency, provided that Lessor shall give Lessee notice of said entry as soon thereafter as possible.

**11. RIGHTS OF LESSEE**

A. Lessee shall have the right, but shall not be required:

1. To install, operate, maintain, repair and store pursuant to the terms of the SPSA, all equipment necessary for the conduct of Lessee's activities.

2. Of access to and from the Premises twenty-four (24) hours a day, seven (7) days a week at no additional charge and access to and from electrical panels, conduits, poles and wires to interconnect or disconnect the System with electrical wiring not within the Premises. This right shall extend to Lessee's contractors, agents, assigns, and guests, provided that said guests are accompanied by an employee.

3. To have the temporary use of space adjacent to the Premises, for the temporary storage and staging of tools, materials and equipment, for the parking of construction crew vehicles, location of temporary construction trailers and location of rigging and material handling facilities reasonably necessary during construction and removal of the System.

B. So long as Lessee conducts its business in a fair, reasonable and workmanlike manner, to peaceably have and enjoy the Premises, and all the rights and privileges herein granted.

**12. MAINTENANCE OF STRUCTURES**

Lessee shall maintain the structures on the Premises, keep the Premises in good order, make such repairs as are customary, remove abandoned equipment from the Premises and shall not deposit the same on or any portion of the Airport except on such areas as shall be reasonably designated by Lessor. The Lessee shall be responsible for providing all customary and necessary janitorial and custodial services on the Premises. The Lessee shall be responsible for snow, rubbish, and trash removal and weed control along with any other work that detracts from the appearance of the Airport.

**13. TRANSFER OF INTEREST**

Except as otherwise provided herein, Lessee may not, without the written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed, at any time during the term of this Lease Agreement, sell, lease, assign, transfer or permit to be acquired, this Lease Agreement or any interest herein; provided, however, that, without the prior consent of Lessor, Lessee may within one hundred (100) days of the Commercial Operation Date (i) assign this Lease Agreement to a wholly-owned subsidiary of Sun Edison LLC; or (ii) assign this Lease Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction) to a Financing Party, as defined in the SPSA.

**14. OBSERVATION OF LAWS, RULES AND REGULATIONS**

Lessee and Lessor agree to observe and obey during the Term of this Lease Agreement, all laws, ordinances, minimum standards, rules and regulations promulgated and enforced by Lessor, and by any other proper authority having jurisdiction over the conduct of operations at the airport, including the federal government, the state, the county and the city now or hereafter in effect.

**15. UTILITIES, REFUSE AND SEWER**

Lessee is responsible for providing all installation and service cost for all utility, refuse and sewer needs at Lessee's sole expense. Lessee agrees that if in the future Lessor decides to provide sewer or refuse service to the Premises, then Lessee will pay a reasonable and fair charge for such service(s). Until such time, Lessee shall be responsible for its own refuse disposal.

**16. ALTERATIONS AND IMPROVEMENTS**

A. Except as already approved in Exhibit B, Lessee shall not make or suffer or permit to be made any alterations, additions or improvements whatsoever in or about the Premises without first obtaining the written consent of Lessor. If Lessor gives such consent, all alterations or improvements shall be done solely at Lessee's expense and in accordance and in compliance with all applicable municipal, state and federal ordinances, laws, rules and regulations. Alterations or improvements shall be compatible with the general decor of the Airport terminal building.

B. Lessee shall allow no liens of mechanics, materialmen, laborers, architects, artisans, contractors or subcontractors to be created against or imposed upon the said Premises. Lessee shall, as required by law, provide a labor and materialman's bond to cover all work and materials and labor arising out of such alterations, additions or improvements. No default shall occur if Lessee contests the amount or validity of any such lien, and actively litigates such claim to conclusion. Lessee may bond against such lien, as may be allowed by law, without constituting a default hereunder.

**17. TITLE VI. CIVIL RIGHTS ASSURANCES**

A. The Lessee, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration under this Lease Agreement, does hereby covenant and agree as a covenant running with the land that:

(1) No person on the grounds of race, color, sex, disability or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

(2) In the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, disability or national origin shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination.

(3) The Lessee shall use the Premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

**18. ENVIRONMENTAL PROTECTION**

A. Lessee shall not commit, or suffer to be committed, any waste upon the Premises, or any nuisance or other act or thing which may disturb the quiet enjoyment of the Airport or surrounding property. Lessor acknowledges that no action authorized by the SPSA shall be considered a waste upon the Premises or nuisance or other act or thing which may disturb the quiet enjoyment of the

Airport or surrounding property. Lessee shall provide, as necessary, a separate drainage, collection, and/or separation system to ensure that no untreated liquid waste from any type of operation, including vehicle cleaning, and oil change operations, will enter the Airport storm drainage or sanitary system.

B. Lessee shall, at all times, comply with all applicable laws, rules and regulations of the federal, state and local governmental agencies. Lessee shall not permit any activity which directly or indirectly produces unlawful amounts or levels of air pollution, noise, glare, heat emission, electronic or radio interference with navigational and communications facilities for the operation of the Airport and for Airport use by aircraft, trash or refuse accumulation, vibration, prop-wash, or jet blast, which is hazardous or dangerous by reason or risk of explosion, fire or harmful emission. Any waste oil storage tanks shall be in approved containers and in accordance with all environmental and fire protection regulations.

C. Lessee, it's members and sublessees shall participate in the Santa Fe Municipal Airport Voluntary Noise Abatement Program.

D. Hazardous substances are any substance, material, or waste, (including any petroleum products, solvents, thinners, herbicides and soil sterilants and aircraft deicing fluids) which is or become designated, classified or regulated as being "toxic," "hazardous," a "pollutant," or is in the future given a similar designation under any federal state or local law, regulation or ordinance.

E. Lessee agrees to defend, indemnify and hold Lessor harmless from and against all liabilities, claims, actions, foreseeable and unforeseeable consequential damages, costs and expenses (including sums paid in settlement of claims and all consultant, expert and legal fees and expenses of Lessor's counsel) or loss directly or indirectly arising out of or resulting from the presence of any hazardous substance as a result of Lessee's or any sub-tenant's activities on the Premises, subsequent to the execution of this Lease Agreement but before, during or after construction, in or around any part of the property or the soil, groundwater or soil vapor on or under the property, including those incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work, or any resulting damages or injuries to the person or property of any parties or to any natural resources. Upon demand by Lessor, Lessee shall defend any investigation, action or proceeding alleging the presence of any hazardous substance as a result of Lessee's or its subtenant's occupancy of the leased property, in any such location which affects the property or which is brought against the Lessor, whether alone or together with Lessee or any other person, all at Lessee's own cost and by counsel to be approved by Lessor in the exercise of its reasonable judgment. Should Lessee fail to defend such action, then Lessor may elect to conduct its own defense at the expense of the Lessee. Lessee shall comply and cause all occupants of the property to comply with all laws, regulations, and ordinances governing or applicable to hazardous substances. Lessee acknowledges that hazardous substances may permanently and materially impair the value and use of real property. Each party shall promptly notify the other party if it knows, suspects or believes, there may be any hazardous substance in or around the property or in the soil, groundwater, or on or under the leased property, or that either party or the Premises or property may be subject to any threatened or pending investigation by any governmental agency under any law, regulation, or ordinance pertaining to any hazardous substance. Lessee shall have no obligation to defend, indemnify, or hold harmless Lessor from any hazardous substance claims, causes of action, or damages which arise on account of Lessor's own conduct, the conduct of third parties other than Lessee's subtenants, contractors, agents, or assigns, or which is attributable to pre-existing conditions or pre-existing events over which Lessee exercises no control, even though the Premises may be impacted thereby.

**19. NONEXCLUSIVE RIGHTS**

A. Lessee shall have the exclusive right and privilege of engaging in and conducting a business on the Premises of the Airport under the terms and conditions set forth herein, provided, however, that this Lease Agreement shall not be construed in any manner to grant Lessee or those claiming under Lessee in this Lease Agreement the exclusive right to the use of the common areas and facilities of said airport other than the specifically described Premises.

B. Lessor shall have the right to lease other portions of the Airport or Airport terminal to other lessees, including other ground, air and transportation services. Lessee understands and agrees that nothing in this Lease Agreement shall be construed as granting or authorizing the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act of 1958, as amended.

**20. TAXES AND LICENSES**

A. The Lessee shall promptly pay any and all taxes, personal property tax, leasehold tax, gross receipts tax, transaction privilege tax or other exaction assessed or assessable and pay all license fees and permit fees applicable to the Lessee's operation, and acquire and keep current, all licenses, municipal, state or federal as the result of the Lessee's operations at the Airport pursuant to this Lease Agreement, and shall not allow any of said taxes, excises or licenses to become delinquent.

B. The Lessee shall not permit any mechanics' or materialman's or any other lien to be placed or foreclosed upon the Premises or improvements thereto. No default shall occur if Lessee contests the amount or validity of any such lien, and actively litigates such claim to conclusion. In the event, Lessee contests the amount or validity of the lien the Lessee shall post a bond against such lien, as may be allowed by law, or (ii) if no bond is posted, at the Lessor's request, the Lessee shall deposit with the Lessor an amount equal to the amount in dispute.

**21. SUBORDINATE PROVISIONS**

A. This Lease Agreement shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States or the State of New Mexico relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal or state funds for the development of the Airport.

**22. OBSTRUCTIONS**

A. Lessor reserves the right to take any action it considers necessary to protect the aerial approaches of the airport against obstruction, together with the right to prevent Lessee from erecting, or permitting to be erected, any building or other structure on the airport which, in the opinion of the Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft. Lessee shall, upon approval by Lessor and prior to any construction of any nature within the boundaries of the Airport, prepare and submit to the Airport Manager and the Federal Aviation Administration, Albuquerque District Office, Airport Division, 1601 Randolph SE, Suite 201N, Albuquerque, NM, 87106, one executed set (four copies) of FAA form 7460-1 "Notice of Proposed Construction or Alterations", as required by Federal Aviation Regulation Part 77. This notice must be submitted at least thirty days prior to the date of the proposed construction/alteration or the date that an application for a construction permit is filed, whichever is earlier.

B. Should a Federal Aviation Administration Obstruction Evaluation determine that

obstruction lights are needed or required on new construction, or should Federal Aviation Administration rules and regulations change to require obstruction lights on existing structures which previously did not require obstruction lights. Lessee agrees to install, maintain and operate such obstruction lights on the top of buildings or structures to be placed on the Premises. If Lessee fails to install, maintain and operate such obstruction lights then the Lessor shall have the right to install, maintain and operate the same at Lessee's expense.

C. Lessor acknowledges that structures, including landing lights, may adversely affect the amount of energy produced by the System and agrees to make reasonable accommodations for the benefit of Lessee to avoid overshadowing or otherwise blocking access of sunlight to the System.

D. Lessor covenants that it will not take any actions during the Term that would interfere with, hinder or frustrate Lessee's ability to (1) proceed with timely construction of the System, (2) generate electricity, or (3) meet its obligations under the SPSA.

### **23. COOPERATION WITH FINANCING PARTY**

A. Lessor confirms that: (1) Financing Party, as defined in the SPSA, will have the right, but not the obligation, to cure any default by Lessee, as a lessee under this Lease Agreement; (2) it will notify Financing Party of any default that would entitle Lessor to terminate this Lease Agreement or abate the rent; and (3) any notice of termination or abatement will not be effective unless Lessor has so notified Financing Party of the default and Financing Party has had a 30-day cure period (or such longer period as may be necessary if the default is not susceptible to cure within thirty (30) days) commencing on the latest to occur of the date on which (i) the cure period under this Lease Agreement expires; (ii) Financing Party receives the notice required by this section; and (iii) Financing Party obtains possession of the Property if the default is not susceptible to cure without possession.

B. All notices, requests or consents required or permitted to be given pursuant to this Article 23 must be in writing and sent by certified mail, return receipt requested or by nationally recognized overnight delivery service providing evidence of the date of delivery, with all charges prepaid, addressed to Financing Party at the address provided in the SPSA.

### **24. SIGNS**

Lessee shall not erect or mount any signs on the Premises without approval of the Airport Manager.

### **25. AMENDMENT IN WRITING**

No amendment between the Lessor and Lessee relative to the leasehold interest herein shall be valid and enforceable unless in writing and executed by both the Lessor and Lessee.

### **26. ATTORNEYS FEES AND COSTS**

If suit is brought by either the Lessor or the Lessee to enforce any provision of this Lease Agreement, the prevailing party shall be entitled to recover from the non-prevailing party in such lawsuit all costs of preparation for and conduct of such lawsuit, including reasonable attorneys' fees.

27. **CHOICE OF LAW**

In the event of contest or legal dispute regarding this Lease Agreement, this Lease Agreement shall be construed according to the laws of the State of New Mexico and any applicable City Ordinances.

28. **APPROVALS, CONSENTS AND NOTICES**

Any approvals, consents and/or notices required to be given to the Lessor shall be hand-delivered, sent via overnight courier service, or sent by certified mail, postage prepaid, addressed to:

Airport Manager  
Santa Fe Municipal Airport  
P.O. Box 909  
Santa Fe New Mexico, 87504-0909

Any approvals, consents and/or notices to be given to the Lessee shall be hand-delivered, sent via overnight courier service or sent by certified mail to:

**NVT LICENSES, LLC**  
c/o SUNEDISON  
12500 Baltimore Avenue  
Beltsville, MD 20705  
Attention: \_\_\_\_\_

with copy to:

SUNEDISON  
12500 Baltimore Avenue  
Beltsville, MD 20705  
Attention: General Counsel

or to such other respective addresses as shown by the date of the notice if delivered by hand or by the date of receipt as shown by the U.S. Postal Service Certified Mail Return Receipt, if mailed.

29. **ARTICLE HEADINGS**

The paragraph and subparagraph headings contained in this Lease Agreement are inserted for reference and convenience and are not intended to define or limit the scope of any provision of this Lease Agreement.

30. **INVALID PROVISIONS**

In the event any covenant, condition or provision contained in this Lease Agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, conditions or provisions contained in this Lease Agreement shall not affect the enforceability of the balance of this Lease Agreement; provided that the invalidity of such covenant, condition or provision does not materially prejudice either the Lessor or the Lessee in its respective rights and obligations contained in

this Lease Agreement.

**31. BINDING ON SUCCESSORS**

All of the covenants, agreements, provisions and conditions of this Lease Agreement shall inure to the benefit of and be binding upon the parties hereto, their successors, legal representatives, and assigns.

**32. SHORT FORM OF LEASE**

This Lease Agreement shall not be recorded. The parties shall execute and record in the Santa Fe County land records a short form memorandum of this Lease Agreement, which shall identify the parties and the Premises, and specify the Term. The recording costs shall be paid by Lessee.

**33. NO WAIVER**

A waiver by Lessor or Lessee of any breach of any provision of this Lease Agreement shall not be deemed a waiver of any breach of any other provision hereof or of any subsequent breach by Lessor or Lessee of the same or any other provision.

**34. INCORPORATION OF EXHIBITS**

All exhibits attached to this Lease Agreement are hereby incorporated herein as though set forth in full in this Lease Agreement itself.

**35. ENTIRE AGREEMENT**

This Lease Agreement and the exhibits attached hereto and the SPSA contain the entire agreement between the parties. In the event of a conflict between this Lease Agreement and the SPSA, the SPSA shall control.

**36. CAPITALIZED TERMS**

Any capitalized terms used in this Lease Agreement that are not defined herein shall have the same meaning ascribed to them in the SPSA.

**In Witness Whereof**, the parties hereto have caused this Lease Agreement to be executed as of the day and year first above written.



LESSOR:  
CITY OF SANTA FE:

David Coss  
David Coss, Mayor  
Date: 9/20/10

ATTEST:

Yolanda Y. Vigil  
Yolanda Y. Vigil, City Clerk  
cmty 8/25/10

APPROVED AS TO FORM:

Geno Zamora, FOR  
Geno Zamora, City Attorney

APPROVED:

Kathryn Ravelling  
Kathryn Ravelling, Finance Director

LEGAL DEPT.  
Approved as to Form  
Initials: CBC  
Date: 9-13-10

LESSEE:  
NVT LICENSES, LLC  
By: NVT, LLC, its manager  
By: Sun Edison Contracting, LLC, its manager  
By: Sun Edison LLC, its manager

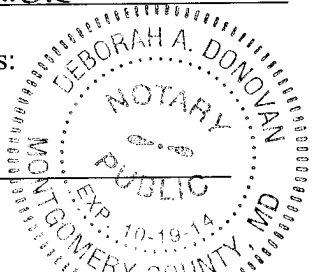
By: Brian Jacolick  
Name: Brian Jacolick  
Title: GM of Americas  
Date: 9-14-10

ACKNOWLEDGMENT

STATE OF MARYLAND )  
Montgomery )ss.  
COUNTY OF PRINCE GEORGE'S )

Subscribed and Acknowledged before me this 14 day of September, 2010 by  
Brian Jacolick

My Commission Expires:



Deborah Donovan  
Notary Public

**EXHIBIT A**

A CERTAIN LEASE PARCEL, CONSISTING OF 12.555 ACRES (546,896 SQUARE FEET) MORE OR LESS, AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS ON THE FOLLOWING PAGES.

**EXHIBIT B  
SITE PLAN**



**Schedule 1**

| Year                 | Annual Rent Fee |
|----------------------|-----------------|
| 1                    | \$9,154.00      |
| 2                    | \$9,428.62      |
| 3                    | \$9,711.48      |
| 4                    | \$10,002.82     |
| 5                    | \$10,302.91     |
| 6                    | \$10,611.99     |
| 7                    | \$10,930.35     |
| 8                    | \$11,258.27     |
| 9                    | \$11,596.01     |
| 10                   | \$11,943.89     |
| 11                   | \$12,302.21     |
| 12                   | \$12,671.28     |
| 13                   | \$13,051.42     |
| 14                   | \$13,442.96     |
| 15                   | \$13,846.25     |
| 16                   | \$14,261.63     |
| 17                   | \$14,689.48     |
| 18                   | \$15,130.17     |
| 19                   | \$15,584.07     |
| 20                   | \$16,051.59     |
| <b>Renewal Years</b> |                 |
| 21                   | \$16,533.14     |
| 22                   | \$17,029.14     |
| 23                   | \$17,540.01     |
| 24                   | \$18,066.21     |
| 25                   | \$18,608.20     |
| 26                   | \$19,166.44     |
| 27                   | \$19,741.44     |
| 28                   | \$20,333.68     |
| 29                   | \$20,943.69     |
| 30                   | \$21,572.00     |
| 31                   | \$22,219.16     |
| 32                   | \$22,885.74     |
| 33                   | \$23,572.31     |
| 34                   | \$24,279.48     |
| 35                   | \$25,007.86     |
| 36                   | \$25,758.10     |
| 37                   | \$26,530.84     |
| 38                   | \$27,326.77     |
| 39                   | \$28,146.57     |
| 40                   | \$28,990.96     |

| Starting Rent Value | Annual Increase |
|---------------------|-----------------|
| \$9,154.00          | 3%              |