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BEFORE THE PLANNING COMMISSION
OF THE
COUNTY OF KAUAI

In The Matter Of The Application)	USE PERMIT NO. U-2016-5
)	CLASS IV ZONING PERMIT
Of)	NO. Z-IV-2016-5
)	SPECIAL PERMIT NO. SP-2016-2
SOLARCITY CORPORATION, a Delaware)	
corporation, for a Use Permit, a)	
Class IV Zoning Permit, and a Special Permit)	
for real property situated at Kapai'a,)	APPLICATION; EXHIBITS "A" – "F"
Hanamaulu, Lihue, Kauai, Hawaii, identified)	
by Kauai Tax Map Key No. (4) 3-8-002:002)	
(por.).)	(KAPAI'A SOLAR PROJECT)
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**USE PERMIT; CLASS IV ZONING PERMIT;
AND SPECIAL PERMIT**

(KAPAI'A SOLAR PROJECT)

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	5
SECTION 1. APPLICANT/SUBJECT PROPERTY/OWNER.....	5
1.1 Applicant.....	5
1.2 Subject Property.....	6
1.3 Ownership.....	6
SECTION 2. LOCATION AND LAND USE DESIGNATIONS OF PROPERTY	6
2.1 Location	6
2.2 Land Use Designations	6
a. SLUC.....	6
b. Kaua'i General Plan.....	6
c. CZO.....	7
d. Development Plan Area.....	7
e. Special Management Area.....	7
f. Violations.....	7
g. Land Use Conditions	7
SECTION 3. PAST, EXISTING AND PROPOSED USES OF SUBJECT PROPERTY	7
3.1 Past and Existing Uses	7
3.2 Proposed Uses	7
3.3 Solar Project	8
a. General Description.....	8
b. Location.....	9
3.4 Construction.....	9
a. Description of Construction Activities.....	9
b. Land Coverage.....	10
3.5 Landscaping.....	11
3.6 Site Grading.....	11
3.7 Operation	11
a. Monitoring.....	11
b. Noise.....	11
c. Lighting.....	11
3.8 Decommissioning.....	11
3.9 Purpose and Need	12
a. Grid Stability	12
b. Reduced Costs.....	12
c. Green Energy	12
d. Public Benefits.....	13
3.10 PPA	13

SECTION 4.	DESCRIPTION OF SUBJECT PROPERTY AND IDENTIFICATION OF SURROUNDING LANDS.....	13
4.1	Adjacent Property.....	13
4.2	Natural Environment	13
	a. General Description.....	13
	b. Soils	13
	c. Rainfall	14
	d. Botanical Resources.....	14
	e. Flood Hazard.....	15
	f. Water Resources.....	15
4.3	Present Uses And Built Environment.....	15
4.4	Potential Future Uses.....	15
SECTION 5.	PERMITS REQUESTED AND REQUIRED.....	15
5.1	Use Permit.....	15
5.2	Class IV Zoning Permit.....	16
5.3	Special Permit.....	16
SECTION 6.	IMPACTS OF DEVELOPMENT.....	16
6.1	Botanical Resources and Wildlife	16
6.2	Historical Resources	17
6.3	Air Quality/Noise	17
6.4	Flooding and Drainage.....	17
6.5	Utilities	18
	a. Potable Water.....	18
	b. Electric/Communications	18
6.6	Wastewater Treatment and Disposal.....	18
6.7	Solid Waste Disposal.....	18
6.8	Governmental Services	18
	a. Fire and Police Services	18
	b. Schools.....	18
6.9	Economics	19
	a. Jobs	19
	b. Housing.....	19
	c. Property Values	19
6.10	Population	19
6.11	Traffic Circulation	19
6.12	Heritage Resources	19
SECTION 7.	SLUC CONSIDERATIONS.....	20
7.1	SLUC Agricultural District.....	20
7.2	Special Permit.....	22
7.3	Development's Compliance with SLUC Agricultural District Standards.....	22
	a. Agricultural Activities.....	23
	b. Decommissioning	23
7.4	State Planning Act.....	23
7.5	Developments Compliance with State Plan	24

SECTION 8. GENERAL PLAN CONSIDERATIONS	24
8.1 Kaua'i General Plan Land Use Designation.....	24
8.2 Development's Compliance with Kaua'i General Plan Standards	26
SECTION 9. CZO AGRICULTURE DISTRICT CONSIDERATIONS	27
9.1 CZO Agriculture District.....	27
9.2 Generally Permitted Uses And Structures	27
9.3 Uses And Structures That Require A Use Permit	27
9.4 Development's Compliance with CZO Agriculture District Standards....	28
SECTION 10. USE PERMIT AND ZONING PERMIT CONSIDERATIONS	28
10.1 Uses	28
10.2 Compatibility With Surrounding Uses	28
10.3 Development's Compliance with CZO Use Permit Standards.....	28
10.4 Development's Compliance with CZO Class IV Zoning Permit Standards	29
SECTION 11. LIHUE DEVELOPMENT PLAN CONSIDERATIONS	29
11.1 Development Plan Goals and Objectives	29
11.2 Development's Compliance with Development Plan Standards.....	30
SECTION 12. COMPLIANCE WITH REQUIREMENTS FOR SLUC SPECIAL PERMIT	30
12.1 Special Permit Requirements.....	30
12.2 The use will not be contrary to the objectives sought to be accomplished by the HRS Chapter 205 and 205A, and the SLUC Rules	30
12.3 The desired use will not adversely affect surrounding property	31
12.4 The use will not unreasonably burden public agencies to provide Roads and streets, sewers, water, drainage and school Improvements, and police and fire protection	31
12.5 Unusual conditions, trends and needs have arisen since the district Boundaries and regulations were established	31
12.6 The land on which the proposed use is sought is unsuited for the Uses permitted with the District.....	31
SECTION 13. HRS CHAPTER 343 (ENVIRONMENTAL IMPACT STATEMENTS) CONSIDERATIONS	32
13.1 HRS Chapter 343.....	32
SECTION 14. NATIVE HAWAIIAN ISSUES	33
14.1 Development's Impacts on Traditional or Cultural Practices	33
SECTION 15. COMMUNITY CONTACTS	33
15.1 Contact with Lihue Business Association	33
SECTION 16. CONCLUSION.....	34

APPLICATION

Comes now, SOLARCITY CORPORATION, a Delaware corporation, Applicant in the above-captioned proceedings, by and through its undersigned attorney, and hereby submits the following Application:

SUMMARY

The Applicant, SolarCity Corporation, has a long history in the development and operation of solar powered electric production facilities. The Applicant proposes to construct and operate a solar facility ("Solar Project") located on approximately 46.5 acres of land in Kapai'a, Hanamaulu, Lihue, Kauai, Hawaii ("Subject Property"). The Subject Property is located immediately west of the Kauai Island Utility Cooperative's ("KIUC") existing Power Plant. The Subject Property will be leased from Grove Farm Company, Incorporated ("Grove Farm").

The Solar Project will produce approximately 13 Mega Watts (Alternative Current) of electrical power. The Applicant and KIUC have entered into a twenty (20) year Power Purchase Agreement ("PPA") whereby KIUC will purchase the electrical power generated by the Solar Project from the Applicant. The system is unique in that it will feed the electrical power into a Battery Energy Storage System (located in a .65 acre area on site) and will be discharged into the KIUC grid during non-daylight, evening peak hours (5:00 p.m. to 10:00 p.m.).

SECTION 1. APPLICANT/SUBJECT PROPERTY/OWNER.

1.1 Applicant. The Applicant is SolarCity Corporation, a Delaware corporation. The Applicant has authorized Max W. J. Graham, Jr. and Michael J. Belles of Belles Graham Proudfoot Wilson & Chun, LLP ("Belles Graham") to file this Application pursuant to the Applicant's Authorization attached hereto as Exhibit "A-1".

1.2 Subject Property. The property which is the subject matter of this Application ("Subject Property") is described as a fifty (50) acre portion of Lot 1-A-3 located in Kapai'a, Hanamaulu, Lihue, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 3-8-002:002 ("Master Lot"). A legal description of the Master Lot is contained in the Limited Warranty Deed And Reservation Of Right attached hereto as Exhibit "B-1". The Subject Property contains approximately 50 acres and the Master Lot contains 5,341.493 acres.

1.3 Ownership. Grove Farm Company, Incorporated, a Hawaii corporation, is the owner of the Master Lot, as shown in the Limited Warranty Deed And Reservation Of Right attached as Exhibit "B-1". The Owner has authorized the Applicant and Belles Graham to file this Application [Exhibit "A-2"].

SECTION 2. LOCATION AND LAND USE DESIGNATIONS OF PROPERTY.

2.1 Location. The Subject Property is located in Kapai'a, Hanamaulu, Lihue, Kauai, Hawaii, and is shown on the Location Map attached hereto as Exhibit "C-1" and on the Tax Map attached hereto as Exhibit "C-2", and on the Project Area Map attached as Exhibit "C-10".

2.2 Land Use Designations. The respective State Land Use Commission ("SLUC"), Kaua'i General Plan, County of Kauai Comprehensive Zoning Ordinance ("CZO"), and other relevant land use designations for the Subject Property are as follows:

a. SLUC. As shown on the Land Use District Boundary map attached as Exhibit "C-5", the Subject Property is located in the SLUC Agricultural District. The Subject Property has been located in the SLUC Agricultural District since the inception of the SLUC Districts. The Subject Property has not been designated as Important Agricultural Lands ("IAL").

b. Kaua'i General Plan. As shown on the General Plan Map attached as Exhibit "C-6", the Subject Property is located in the Kaua'i General Plan Agriculture

Land Use Designation. The Subject Property has been consistently located in an Agriculture designation or classification under prior General Plans.

c. CZO. As shown on the Zoning Map attached as Exhibit "C-4", the Subject Property is located in the CZO Agriculture District. The Subject Property has been located in the CZO Agriculture District since the adoption of the CZO.

d. Development Plan Area. The Subject Property is located within the Lihue Development Plan Area. The Subject Property has always been located within the Lihue Development Plan Area since the original adoption of the original Lihue Development Plan (Ordinance No. 335, November 29, 1977), which was recently updated by the Lihue Community Plan (Ordinance No. 989, June 22, 2015).

e. Special Management Area. None of the Subject Property is located within the Special Management Area ("SMA") of the County of Kauai.

f. Violations. There are no existing violations of any land use laws or regulations on the Subject Property.

g. Land Use Conditions. The Subject Property is not subject to any land use conditions.

SECTION 3. PAST, EXISTING AND PROPOSED USES OF SUBJECT PROPERTY.

3.1 Past and Existing Uses. The Subject Property has been used for agricultural purposes in the past, including sugar cane cultivation, cattle and livestock pasture and seed corn cultivation purposes. The Subject Property has been used most recently for seed corn cultivation purposes.

3.2 Proposed Uses. The Applicant wishes to construct the improvements and engage in the activities on the Subject Property described in Sections 3.3 through 3.8 (collectively referred to as the "Development").

3.3 Solar Project. The Solar Project will be located on a 46.5 acre portion of the Subject Property. It will consist of an approximately 17 Mega Watt-Direct Current (MW-dc)/13 Mega Watt-Alternating Current (MW-ac) ground-mount solar PV system, coupled with a 13 MW-ac/52 Mega Watt hour (MWh) Battery Energy Storage System (BESS), and related interconnection and ancillary facilities. The interconnection facilities will include a dedicated 12.47 kilovolt (kV) overhead infrastructure that will run from the Solar Project Site, located directly adjacent to the Kauai Island Utility Cooperative's ("KIUC") existing Kapaia Power Plant and switchyard, to a generator step-up transformer located on KIUC property just outside the Kapaia switchyard footprint. The generator will convert the power generated into utility-quality power, which will tie into KIUC's existing transmission system. Additional communication connections and equipment will be installed to interface with KIUC's supervisory control and data acquisition (SCADA) system so that the energy generated by the Solar Project can be remotely controlled and dispatched by KIUC. The Solar Project Site will be surrounded by a seven-foot tall chain link security fence.

a. General Description. The chart below summarizes the Solar Project dimensions and overall ground disturbance associated with major permanent Solar Project features.

Approximate Solar Project Component Dimensions			
	Solar PV System	Battery Energy Storage System	TOTAL
Height	77"	86"	---
Width	1.6"	52"	---
Length	39"	38"	---
Number of Units Installed	54,285 panels	520 batteries	---
Total Surface Area	45.85 acres	0.65-acre	46.50 acres
Total Ground Disturbance (new impervious surface)	< 1 acre	0.65-acre	< 2 acres

(i) The proposed ground-mounted solar PV system will be approximately 6.5 feet (77 inches) in height at its highest point. Each panel is roughly 1.6 inches in width by 3.2 feet (39 inches) in length, and approximately 54,285 total panels will be installed. Given that panels will be spaced to allow infiltration of runoff through sheet flow, the total amount of new impervious surface from the PV system will be minimal (less than 1 acre). Accordingly, while the overall surface area of the panels will be approximately 45.85 acres, less than 1 acre of new ground disturbance will occur as a result of the PV system installation.

(ii) The BESS units will be approximately 7.2 feet (86 inches) in height, and each BESS unit is roughly 4.3 feet (52 inches) in width by 3.2 feet (38 inches) in length. Approximately 520 BESS units will be installed, requiring a total area of approximately 0.65-acre.

(iii) The combined surface area required for the PV system and the BESS is 46.5 acres, while less than two (2) acres of new impervious surface will result from the Solar Project. The two acres of impervious surface will add only a small fraction of the total land coverage allowed on the Master Lot.

b. Location. The location of the facilities that comprise the Solar Project is shown on the Solar Facility Site Plan attached as Exhibit "C-3".

3.4 Construction. Project construction and commissioning is proposed to commence in March or April 2016 and is anticipated to be completed so as to allow full-scale commercial operation in the fourth quarter of 2016.

a. Description of Construction Activities. The general sequence of construction will be to install sediment and erosion control measures, install posts, underground electrical conduit and wire, solar panel racking, panel installation, array wiring, battery storage

array, and finally electrical equipment installation and connection. The posts will be installed via hydraulic driver to a predetermined depth according to soil conditions. The posts are structural and will not generally require the addition of concrete footers for foundations. The solar racking spans the posts, and the panels bolt to the racking to form the array. The terminus of each array will include an approximately two-foot wide and three-foot deep trench for the conduit providing underground electrical connection to the power inverters and BESS. All wiring will be performed and inspected to National Electric Code and best industry practices. Trench excavation will be performed with a backhoe and trench backfilling will be done with the excavated, native soil, and compacted to design specifications in order to prevent sinking. Disturbed soil will be stabilized and seeded per sediment and erosion control plans and applicable state environmental guidelines. In addition to post drivers and backhoes as noted above, typical construction equipment will include all-terrain forklifts, skidsteer with fork attachments for unloading and dispersing material, and other equipment as necessary.

b. Land Coverage. The solar panels will be elevated on structural posts, minimizing new impervious area. Due to the topography of the site, no major earthwork is anticipated. The total land occupied by the Solar Project will be approximately 46.5 acres (less than 1 percent) of the total area of the Master Lot. This includes temporary disturbance for underground electrical conduit along with the proposed permanent impervious surface. The overall permanent disturbance to the site will be minimal given that the proposed solar panels are mounted on structural posts with a racking system. The proposed development will add less than two (2) acres of new impervious surface, which will consist of the solar panel mounting posts, transformer pads, battery storage area, and fence posts. Because of the small amount of increase in impervious area, the storm water runoff characteristics will not be significantly altered.

3.5 Landscaping. In order to mitigate visual impacts, landscaping will be installed and maintained around the Solar Project as may be necessary to screen it when viewed from Maalo Road.

3.6 Site Grading. The Project Site is level and will require minimal grading. Some grading may be required for interior service roads. The Applicant will obtain all necessary grading permits.

3.7 Operation. After construction and commissioning, the system will operate with minimal servicing and maintenance.

a. Monitoring. Metering equipment will send performance and production data to continuously monitored servers. The Applicant's software will notify its Operations & Maintenance team if the system is underperforming, after which a technician can be dispatched as required. These occurrences are infrequent and typically consist of one technician for service and repair.

b. Noise. During operation, the solar panels are silent. The solar inverters are also very quiet, emitting less than 50 a-weighted decibels (dBA) at 3 meters (less than 10 feet), which is approximately the loudness of a conversation.

c. Lighting. Permanent lighting may be required for the Solar Project for site security. Any onsite lighting will be motion sensor-activated as well as angled downward and shielded to avoid excess light or glare beyond the Solar Project boundary.

3.8 Decommissioning. Following the anticipated 25 to 30 year life and operation of the Solar Project, all equipment (panels, racks, mounting poles, fencing, and electrical appurtenances) will either be retrofitted with new equipment or will be removed from the Solar Project Site, which will be restored to its preconstruction condition to the greatest extent practicable. The Applicant will provide proof of financial security to decommission the facility as required.

3.9 Purpose and Need.

a. Grid Stability. The proposed Solar Project will provide the key benefit of improving electric grid stability by enabling KIUC to utilize stored energy from the BESS to help meet KIUC's afternoon and evening peak demand. KIUC intends to use approximately 80%-85% of the output from the PV system to charge the BESS, such that KIUC will be able to dispatch the stored energy to: (1) help with ramping towards KIUC's afternoon/evening peak (which will avoid or reduce the need for KIUC to ramp up its conventional oil-fueled units), and (2) shave the evening peak, avoiding or reducing the need to dispatch KIUC's most inefficient conventional oil-fueled unit(s).

b. Reduced Costs. The projected reduction in oil use will result in significant cost savings for KIUC and its members/customers. KIUC anticipates that once the Project is placed into service, KIUC and its members/customers will use approximately 37,474 fewer barrels of oil annually. KIUC estimates that this would result in \$12.8 to \$52.6 million (net present value) in total savings over the 20-year term of the PPA.

c. Green Energy. The Project will also provide benefits to human health and environment through the use of an alternative "green" energy source that does not generate greenhouse gases and does not result in water contamination or other environmental impacts often associated with fossil fuel production. The energy generated will assist KIUC in achieving the State of Hawaii's Renewable Portfolio Standard (RPS), as set forth in Hawaii Revised Statutes §269-91 et seq. It will also be consistent with KIUC's 2013-2025 Strategic Plan to move towards energy independence and decreased reliance on foreign imported oil by meeting at least 50% of KIUC's annual electricity sales with energy generated by renewable resources by the year 2023.

d. Public Benefits. The construction and maintenance of the system will benefit the public as a whole and support the local economy through increased tax revenues, reduced unemployment, and an increase in the sale of local goods and services.

3.10 PPA. The Applicant and KIUC have entered into a Power Purchase Agreement. By its terms, KIUC will purchase the electrical power generated by the Solar Project over a twenty (20) year period. A description of KIUC's participation is contained in the KIUC Press Release (09/09/15) attached as Exhibit "E-1".

SECTION 4. DESCRIPTION OF SUBJECT PROPERTY AND IDENTIFICATION OF SURROUNDING LANDS.

4.1 Adjacent Property. The Master Lot is located adjacent to, or within 300 feet of, the properties identified on the Adjacent Property Index attached as Exhibit "D-1", and shown on the Tax Maps attached as Exhibits "D-2" through "D-10".

4.2 Natural Environment.

a. General Description. The Subject Property is composed of gently sloping lands (3% - 8%) in an area generally lying north of Lihue and west of Hanamaulu Town across the road from, and to the west of, KIUC's Kapai'a power plant. The Subject Property is located approximately 285-295 feet above sea level. To the south of the Subject Property are the Hanamaulu Stream and the De Mello Reservoir. The Subject Property is shown on the Photographs attached as Exhibits "F-1" through "F-4".

b. Soils. The soils within the project area are Puhī Silty Clay Loam, as shown on the Soil Survey Map attached as Exhibit "C-7". These soils are described as follows:

"Puhī Series

This series consists of well-drained soils on uplands on the island of Kauai. These soils developed in material derived from basic igneous rock. They are nearly level to steep. Elevations range from 175 to 500 feet. The annual rainfall

amounts to 60 to 80 inches. The mean annual soil temperature is 73° F. Puhi soils are geographically associated with Lihue and Kapaa soils.

These soils are used for sugarcane, pineapple, truck crops, orchards, pasture, woodland, wildlife habitat, water supply, and homesites. The natural vegetation consists of guava, Java plum, pangolagrass, kikuyugrass, elephantopus, joeo, yellow foxtail, and rhodomyrtus.

. . .

Puhi silty clay loam, 3 to 8 percent slopes (PnB).—On this soil, runoff is slow and the erosion hazard is slight.

This soil is used for sugarcane, pineapple, orchards, pasture, truck crops, and homesites. (Capability classification IIe, irrigated or nonirrigated; sugarcane group 1; pineapple group 5, pasture group 8; woodland group 7).

Puhi silty clay loam, 8 to 15 percent slopes (PnC).—On this soil, runoff is slow and the erosion hazard is slight.

This soil is used for sugarcane, pineapple, pasture, and orchards. (Capability classification IIIe, irrigated or nonirrigated; sugarcane group 1; pineapple group 6; pasture group 8; woodland group 7)."

As shown on the Detailed Land Classification Map (Island of Kauai) (Land Study Bureau, University of Hawaii) attached as Exhibit "C-8", the Over-all Productivity Rating for lands within the Subject Property is Class B (B78).

c. Rainfall. The Subject Property receives approximately 60 to 80 inches of annual rainfall.

d. Botanical Resources. The vegetation within the Subject Property is almost entirely exotic. There are extensive areas of exotic grasses, and harvested corn stalks, with haole koa, and Java plum (*Syzygium cumini*) along the edges.

e. Flood Hazard. According to the Federal Insurance Rate Map (Map No. 1500020307E) (Exhibit "C-9"), the Subject Property is located in Flood Zone X, which is an area determined to be outside of the 500 year flood plain.

f. Water Resources. The Solar Project will have no well facilities, and will have no impact on Groundwater Resources. The Solar Project will not need to withdraw water from, and will have no impact on, any streams, including but not limited to, the Hanamaulu Stream (located to the west and south of the Subject Property).

4.3 Present Uses And Built Environment. The Subject Property lies to the west of Hanamaulu Town and is undeveloped. There are no existing buildings or structures on the Subject Property. The KIUC's Kapaia Power Plant is located across the road from, and to the east of, the Subject Property. For the past 100 years, agricultural activities on the Subject Property have included sugarcane cultivation, cattle raising, and most recently seed corn cultivation. A private, paved Cane Haul Road (which extends from Maalo Road, Highway 583, a State highway) provides access along the eastern boundary of the Subject Property. With the exception of the KIUC Power Station and the Kauai Sporting Clays facility (a skeet shooting range), the surrounding area is primarily rural, dominated by a mixture of agricultural uses.

4.4 Potential Future Uses. The Applicant has no present plans to develop the Subject Property, except as described herein.

SECTION 5. PERMITS REQUESTED AND REQUIRED.

5.1 Use Permit. The construction of the Development will take place within the CZO Agriculture District. The Development is a Solar Energy Facility that requires a Use Permit pursuant to CZO Sections 8-2.4(g)(16) and 2.4(c)(12). Therefore, the Applicant is requesting that the Planning Commission issue a Use Permit pursuant to CZO Section 8-3.2 for the construction of the Development.

5.2 Class IV Zoning Permit. The Development requires the issuance of a Class IV Zoning Permit as a condition of the Use Permit approval pursuant to CZO Section 8-8.4(4).

5.3 Special Permit. A SLUC Special Permit as described in HRS Section 205-6 and Hawaii Administrative Rules ("HAR") Title 15, Subtitle 3, Chapter 15, Subchapter 12, is required for the proposed Development.

SECTION 6. IMPACTS OF DEVELOPMENT.

6.1 Botanical Resources and Wildlife. The existing state of botanical resources and wildlife have been heavily compromised by past and present agricultural uses on the Subject Property. As a result, there do not appear to be any mammalian or avian species or botanical resources that will be endangered by the Development. The habitat currently present on the Solar Project Site is comprised of former sugarcane lands which have been used for various diversified agricultural purposes since the closure of sugarcane operations in the area. The vegetation is dominated almost to the exclusion of native species by alien introduced grasses and weedy species. Terrestrial mammals present on the Solar Project Site and within the vicinity are likewise alien species. There is the possibility that the endemic endangered Hawaiian hoary bat (*Lasiurus cinereus semotus*) overflies the Solar Project Site and possibly forages for insects on a seasonal basis above the Solar Project Site. Avian species present on the Solar Project Site are likewise prominently alien species, though there is the possibility that the endangered NĒNĒ (*Branta sandvicensis*) may use resources within the project area on a seasonal basis. There are no resident seabirds on the Solar Project Site, though both the threatened Newell's Shearwater (*Puffinus newel*) and the endangered Hawaiian Petrel (*Pterodroma sandwichensis*) have been recorded overflying the general project area on an annual basis during the nesting season.

6.2 Historical Resources. The Subject Property has been heavily disturbed by past and present agricultural activities. As a result, as set forth in the Archaeological Inventory Surface Study for the Kapai'a Solar Project (prepared by Hallett H. Hammatt and David Shideler, Cultural Surveys Hawaii, Inc., September 2015) ("AISS"), there do not appear to be any archaeological, cultural or historical resources on the surface of the Subject Property in which the Development will take place which will be affected by the Development. *[NOTE: The AISS will be submitted under separate cover.]* In the event of inadvertent historic site or burial discovery in the future, the Applicant will immediately contact the Historic Preservation Division of the Department of Land and Natural Resources.

6.3 Air Quality/Noise. The Development will have little or no impact on the air quality and ambient noise levels in the area. Air quality and ambient noise levels may be affected at a very minimal level during the Development activities. All vehicles or equipment used by the Applicant during construction will be properly muffled, housed and maintained to reduce any noise impacts or emission impacts. The Environmental Protection Agency (EPA) and State of Hawaii air quality standards will not be exceeded.

6.4 Flooding and Drainage. The Subject Property is situated within Flood Zone X (Areas outside of 500 year flood plain), as shown on the County of Kauai's flood insurance rate map (Flood Insurance Rate Map 150002-0307E) attached as Exhibit "C-9". The Development will be located within Flood Zone X. The Development will meet all of the requirements of the Flood Plain Management Ordinance of the County of Kauai, as contained in Chapter 15, Article 1, of the Kauai County Code, 1987. The Development will have no impact on flooding on or around the Subject Property. All drainage resulting from construction activities, from agricultural activities, and from the increase in land coverage will be retained on site and subject to best management practices. No new surface water flows will be discharged into the Hanamaulu Stream or the De Mello Reservoir.

6.5 Utilities.

a. Potable Water. The Development will not need potable water. To the extent needed, water for the Subject Property will be obtained from the irrigation system operated by the Owner on and adjacent to the Subject Property.

b. Electric/Communications. The Subject Property will obtain electric service from its own facilities and communication services from Hawaiian Telcom, Inc. Existing electric and communications facilities are presently adequate to provide the demand for such services that will be generated by the proposed Development.

6.6 Wastewater Treatment and Disposal. The Development will not utilize or need an Individual Wastewater Systems ("IWS"). If necessary, the Applicant will use portable toilets approved by the State Department of Health.

6.7 Solid Waste Disposal. Solid waste collection will be provided by private means. Solid waste will be taken to the County's Transfer Stations for disposal in the County Landfill.

6.8 Governmental Services. The Development will have the following impacts on governmental services:

a. Fire and Police Services. Fire and police services in the vicinity are located in Lihue, approximately five (5) miles from the Subject Property. The Development of the Subject Property will not significantly increase the need for existing fire and police services.

b. Schools. The closest schools are Wilcox Elementary School and Kauai High School located in Lihue and King Kaumualii Middle School located in Hanamaulu. The Development will not generate any additional enrollment.

6.9 Economics. The Development will have the following economic impacts:

a. Jobs. The construction activities associated with the Development will result in 75 to 100 jobs. Thereafter, existing employees of the Applicant will operate the Solar Facility.

b. Housing. The Development will not result in the need for additional worker housing. Once construction is complete, the Solar Facility will be operated by the Applicant's employees, who will be Kauai residents who are already living on Kauai.

c. Property Values. Since the fair market value of real property is based on the value of the land and physical improvements, the completion of the Development will increase the value of the Subject Property. This will result in increased real property taxes on the Subject Property, which will directly benefit the County of Kauai. However, it will not, in and of itself, have a material impact on the value of, or real property taxes assessed against, surrounding properties.

6.10 Population. The Development will not result in any increase in population.

6.11 Traffic Circulation. The major roads which service the Subject Property are Maalo Road (Highway 583), a State highway, and a private, paved Cane Haul Road. The Development, in and of itself, will not significantly increase traffic on these roads.

6.12 Heritage Resources. The Subject Property is located within the "Open Space, Parks, Agriculture, Conservation" Heritage Resources Designation ("Open Space H.R. Designation") (Kaua'i General Plan, November 2000). These Maps document the Heritage Resources of Kauai, including mountains, stream valleys and gulches, bluffs and other coastal features. Within the Open Space H.R. Designation are landforms that may have ecological, recreational, cultural and scenic values. In the case of the Subject Property, only its scenic values would have importance.

The proposed Development will be located on a relatively level portion of the Subject Property. The public view of the Development will be from parts of Maalo Road (which is a Scenic Roadway Corridor). All structures will be designed to the extent possible to blend harmoniously into the surrounding environment. Building materials and exterior colors will be compatible with the surrounding environment. All of the structures will be landscaped so as to minimize visual impacts.

SECTION 7. SLUC CONSIDERATIONS.

7.1 SLUC Agricultural District. The area of the Subject Property in which the Development will occur is located within the SLUC Agricultural District. Permitted uses in the SLUC Agricultural District are set forth in HRS Section 205-4.5(a), which provides in relevant part as follows:

"§205-2. Districting and classification of lands.

(d) Agricultural districts shall include:

(6) Solar energy facilities; provided that:

- (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D or E; and
- (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to Section 205-6;"

"§205-4.5 Permissible uses within the agricultural districts.

(a) Within the agricultural district all lands with soil classified by the land study bureau's detailed land

classification as overall (master) productivity rating class A or B, and for solar energy facilities, class B or C shall be restricted to the following permitted uses:

(7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;

(21) Solar energy facilities on lands with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating B or C for which a special use permit is granted pursuant to Section 205-6; provided that:

(A) The area occupied by the solar energy facilities is also made available for compatible agricultural activities at a lease rate that is at least fifty per cent below the fair market rent for comparable properties;

(B) Proof of financial security to decommission the facility is provided to the satisfaction of the appropriate county planning commission prior to date of commencement of commercial generation; and

(C) Solar energy facilities shall be decommissioned at the owner's expense according to the following requirements:

- (i) Removal of all equipment related to the solar energy facility within twelve months of the conclusion of operation or useful life; and
- (ii) Restoration of the disturbed earth to substantially the same physical condition as existed prior to the development of the solar energy facility.

For the purposes of this paragraph, "agricultural activities" means the activities described in paragraphs (1) to (3); or..."

7.2 Special Permit. The requirements for the issuance of a Special Permit are contained in HRS Section 205-6, which provides in relevant part as follows:

"§205-6 Special Permit. (a) Subject to this section, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Any person who desires to use the person's land within an agricultural or rural district other than for an agricultural or rural use, as the case may be, may petition the planning commission of the county within which the person's land is located for permission to use the person's land in the manner desired...Copies of the special permit petition shall be forwarded to the land use commission, the office of planning, and the department of agriculture for their review and comment.

...

(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter;...

(d) Special permits for land the area of which is greater than fifteen acres...shall be subject to approval by the land use commission. The land use commission may impose additional restrictions as may be necessary or appropriate in granting the approval, including the adherence to representations made by the applicant."

7.3 Development's Compliance with SLUC Agricultural District Standards. The proposed uses include the development of: solar energy facilities (within B rated lands); and utilities. Both of these proposed uses are recognized as uses under HRS Sections 205-2(d)(6)(B) and 205-4.5(a)(21) are uses which may be permitted, subject to the issuance of a Special Permit pursuant to HRS Section 205-6. The Applicant will satisfy the special provisions applicable to solar energy facilities as follows:

a. Agricultural Activities. The Applicant will lease the usable portions of the Subject Property for the pasturing of sheep and/or goats at rates which are at least 50% below the fair market rental value.

b. Decommissioning. The Applicant will provide such security as required to insure the decommissioning and removal of the Solar Project improvements at the end of the lease term.

7.4 State Planning Act. The State Planning Act contains Objectives and Policies to assist the State in attaining its long-range planning Goals. Included in the Objectives and Policies are the following:

a. **"§226-18 Objectives and policies for facility systems—energy.**

(a) Planning for the State's facility systems with regard to energy shall be directed toward the achievement of the following objectives, giving due consideration to call:

(1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;

(2) Increased energy, self-sufficiency where the ratio of indigenous to imported energy use is increased;

(3) Greater energy security and diversification in the face of threats to Hawaii's energy supplies and systems; and

(4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use.

. . .

(c) To further achieve the energy objectives, it shall be the policy of this State to:

(1) Support research and development as well as promote the use of renewable energy sources;

. . .

(7) Promote alternate fuels and transportation energy efficiency;

(8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications;

...

(10) Provide priority handling and processing for all state and county permits required for renewable energy projects....

b. **§226-108 Sustainability.** Priority guidelines and principles to promote sustainability shall include:

...

(2) Encouraging planning that respects and promotes living within the natural resources and limits of the State...."

7.5 Development's Compliance with State Plan. The proposed Solar Project complies with the State Planning Act in that it will: provide dependable, efficient and economical energy; increase energy self-sufficiency; promote energy security; reduce greenhouse gas emissions; and promote living within the natural resources and limits of the State.

SECTION 8. GENERAL PLAN CONSIDERATIONS.

8.1 Kaua'i General Plan Land Use Designation. The area of the Subject Property in which the Development will occur is located in the Kaua'i General Plan Agriculture Land Use Designation. The policies governing such lands are set forth in Section 5.4 of the Kaua'i General Plan, which provides in relevant part as follows:

"5.2.1 Policy

(a) Lands included within the Agriculture designation shall be predominantly used for or held in reserve to be used in the future for agricultural activities. These activities include the breeding, planting, nourishing and caring for, gathering, and processing of any animal or plant organism, including aquatic animals and plants, for the purpose of producing food or material for non-food products; the commercial

growing of flowers or other ornamental plants; the commercial growing of forest products; and the commercial breeding and caring for domestic animals and pets.

- (b) The primary intent of the Agriculture designation is to conserve land and water resources in order to:
 - (1) insure an excellent resource base for existing and potential agricultural uses;
 - (2) assure a sufficient supply of land available for sale or lease at a cost that is economically feasible for agricultural enterprise; and
 - (3) promote and preserve open agricultural lands as a key element of Kaua'i's rural character and lifestyle, essential to its image as "The Garden Island" and to the continued viability and development of Kaua'i's visitor industry.
- (c) In administering zoning and subdivision regulations, the County shall seek to preserve important agricultural lands. Important agricultural lands include those designated "A" or "B" by the Land Study Bureau evaluation or "Prime" or "Unique" by the Agricultural Lands of Importance State of Hawai'i evaluation; provided that these ratings shall be superseded at such time as the State of Hawai'i officially maps and designated Important Agricultural Lands, as mandated in the State Constitution.
- (d) Lands designated Agriculture shall include: important agricultural lands; lands in active agricultural use; lands with potential for agriculture, silviculture or aquaculture; and other lands not suited for urban development because of location, topography, economy of public services, or other purpose related to general health, safety and welfare.
- (e) The secondary intent of the Agriculture designation is to provide an opportunity for Kaua'i citizens to reside in an agricultural community. An "agricultural community" is an area that has both agricultural uses and residences. Typically, an agricultural community is established through subdivision of land and provision of roads and potable water service. Agricultural communities are generally located in outlying areas, do not have convenient access to

County facilities, and may not receive the full range or highest level of County services such as are available to residential communities, towns, and urban centers.

- (f) The primary intent of the Agriculture designation shall take precedence over the secondary intent.
- (g) To implement the Agriculture designation, specific controls on the subdivision and alteration of designated lands shall be formulated to prevent the dissipation of agricultural potential, the loss of rural character, and the dispersal of residential and other urban uses.
- (h) The following principles shall be applied in the development of an agricultural community:
 - (1) maintain irrigation works and easements where feasible and beneficial to existing or potential agricultural uses within the site or downstream; and
 - (2) preserve wetlands and streams and provide a riparian buffer area to prevent land disturbance and to filter runoff."

8.2 Development's Compliance with Kaua'i General Plan Standards. The proposed uses include solar energy facilities and utilities. The Development itself will have no significant impact on the surrounding environment. The Development will include uses that are compatible with agricultural and other uses in the area, as well as with the surrounding environment. The Development will help provide a stable, independent source of energy production, which is necessary for agricultural activities on Kauai. The Development complies with the Kaua'i General Plan policy for the Agricultural Designation as a use which promotes agricultural uses.

SECTION 9. CZO AGRICULTURE DISTRICT CONSIDERATIONS.

9.1 CZO Agriculture District. The Subject Property is located within the CZO Agriculture District. The purposes of the CZO Agriculture District are set forth in CZO Article 8, which provides in relevant part as follows:

"Sec. 8-8.1 Purpose.

The Agriculture District establishes means by which land needs for existing and potential agriculture can be both protected and accommodated, while providing the opportunity for a wider range of the population to become involved in agriculture by allowing the creation of a reasonable supply of various sized parcels.

(a) To protect the agriculture potential of lands within the County of Kaua'i to insure a resource base adequate to meet the needs and activities of the present and future.

(b) To assure a reasonable relationship between the availability of agriculture lands for various agriculture uses and the feasibility of those uses.

(c) To limit and control the dispersal of residential and urban use within agriculture lands."

9.2 Generally Permitted Uses And Structures. CZO Section 8-2.4(q) contains the Permitted Uses in the CZO Agriculture District, which include the following:

"Solar energy facilities placed within land with soil classified by the State of Hawaii Land Study Bureau's detailed land classification as overall (master) productivity rating B, C, D or E; those facilities placed within land with soil classified as overall productivity rating class B and C shall not occupy more than ten percent (10%) of the acreage of the parcel, or twenty (20) acres of land, whichever is less."

9.3 Uses And Structures That Require A Use Permit. CZO Section 8-2.4(r) contains the Uses in the CZO Agriculture District which require a Use Permit and include the following:

"(14) Any other use or structure which the Planning Director finds to be similar in nature to those listed in this section and appropriate to the District."

9.4 Development's Compliance with CZO Agriculture District Standards. The proposed Solar Energy Facilities will require a Use Permit pursuant to CZO Sections 8-2.4(q)(16) and 8-2.4(r)(14). The Development itself will have no significant impact on the surrounding environment. The Development will include uses that are compatible with other uses in the area, as well as with the surrounding environment. As such, the Development complies with CZO Section 8-8.1 in that it assure a reasonable relationship between the availability of agricultural lands for various agricultural uses and the feasibility of those uses; and will be incidental to the agricultural uses and the agricultural character of the surrounding lands.

SECTION 10. USE PERMIT AND ZONING PERMIT CONSIDERATIONS.

10.1 Uses. Pursuant to CZO Section 8-3.2, the Applicant has applied for a Use Permit for the proposed Development. Consistent with CZO Sections 8-2.4(q)(16) and 8-2.4(r)(14), the proposed uses and structures are Solar Energy Facilities which are Uses And Structures For Which A Use Permit Is Required within the CZO Agriculture District.

10.2 Compatibility With Surrounding Uses. The Subject Property is surrounded by properties located within the SLUC Agricultural District, the CZO Agriculture District, and the CZO Open District. Uses on the surrounding lands include farm dwelling uses, KIUC's Power Station, a private skeet shooting range, and agricultural uses. The Subject Property is similar in topography, character and nature with adjacent and surrounding properties, and the Development activities are consistent with such surrounding uses.

10.3 Development's Compliance with CZO Use Permit Standards. The Development activities on the Subject Property are in compliance with the standards for Use Permits as contained in CZO Section 8-20.5(a) in that the Development will be:

- a. a compatible use;
- b. not detrimental to health of persons residing or working in the neighborhood;
- c. not detrimental to safety of persons residing or working in the neighborhood;
- d. not detrimental to peace of persons residing or working in the neighborhood;
- e. not detrimental to morals of persons residing or working in the neighborhood;
- f. not detrimental to comfort and general welfare of persons residing or working in the neighborhood;
- g. not detrimental or injurious to property or improvements in the neighborhood;
- h. not detrimental to the general welfare of the community;
- i. not a cause of substantial harmful environmental consequences to the Subject Property, or to other lands or waters;
- j. not inconsistent with the intent of Chapter 8, KCC; and
- k. not inconsistent with the General Plan.

10.4 Development's Compliance with CZO Class IV Zoning Permit Standards.

The Applicant has complied with the procedural provisions for a Class IV Zoning Permit by its filing and processing of this Application.

SECTION 11. LIHUE DEVELOPMENT PLAN CONSIDERATIONS.

11.1 Development Plan Goals and Objectives. The goals and objectives of the Lihue Community Plan for the area surrounding the Subject Property is for continued

agricultural activities and open space preservation. However, the Lihue Community Plan, in Section 5.5 in Public Facilities And Infrastructure, contains the following Policy:

"Policies

The following policies pertain to public facilities and infrastructure in the Līhu'e District:

- Continue to reduce reliance on fossil fuels for energy production, instead focusing on energy efficiency and renewable sources of energy generation."

11.2 Development's Compliance with Development Plan Standards. The proposed use of the Subject Property will not conflict with any of the Goals contained in the Lihue Community Plan. The design, layout and outside appearance of the Development is and will be compatible with the natural beauty of the area and will not interfere with surrounding agricultural uses in the area. The proposed use will provide economic opportunity for Kauai residents. The proposed use will have no negative impact on the public safety or welfare, on any endangered species of plants or animals, on archaeological or historic sites, or on recreational opportunities on or around the Subject Property. The development of alternative energy sources will promote the policies of the Lihue Community Plan for Public Facilities And Infrastructure.

SECTION 12. COMPLIANCE WITH REQUIREMENTS FOR SLUC SPECIAL PERMIT.

12.1 Special Permit Requirements. The proposed Development will meet with the requirements for an SLUC Special Permit, as contained in Hawaii Revised Statutes Section 205-6 and in Section 15-15-95 of the Land Use Commission Rules (Hawaii Administrative Rules) as set forth herein.

12.2 The use will not be contrary to the objectives sought to be accomplished by the HRS Chapter 205 and 205A, and the SLUC Rules. The proposed use will not interfere

with other agricultural uses which are generally allowed within the SLUC Agricultural District. It is consistent with solar facility uses which are allowed (with a Special Permit) in the SLUC Agricultural District. It is also located (across the road from the KIUC Power Plant) so as to minimize impacts on agricultural activities in this area.

12.3 The desired use will not adversely affect surrounding property. As discussed herein, the proposed use will be compatible with the surrounding neighborhood and uses, and will not generate any significant adverse impacts. It will not prevent surrounding lands from being used for agricultural purposes. The amount of additional traffic that will be generated as a result of this proposal will be insignificant and will not create any substantial adverse impacts.

12.4 The use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection. As discussed herein, no burden will be placed on public agencies to provide additional facilities, services, and utilities as a result of this proposal. Conversely, by providing an alternative green source of energy for electricity, it will promote the sustainability and availability of electrical production resources for the public.

12.5 Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The State has recently recognized the need to promote alternative energy production, including solar energy production. Such facilities require large areas, as are available in the SLUC Agricultural District compared to the SLUC Urban District. Provided such new uses do not adversely impact surrounding agricultural activities, they are recognized as necessary and permissible in the SLUC Agricultural District.

12.6 The land on which the proposed use is sought is unsuited for the uses permitted with the District. Although the Subject Property is suitable for agricultural uses, it is

better suited at this time for the production of alternative energy production via the Solar Energy Facilities proposed herein.

SECTION 13. HRS CHAPTER 343 (ENVIRONMENTAL IMPACT STATEMENTS) CONSIDERATIONS.

13.1 HRS Chapter 343. The Development is not subject to the provisions of Hawaii Revised Statutes Chapter 343. HRS Chapter 343 requires the preparation of an Environmental Assessment and/or an Environmental Impact Statement for certain activities as specified in HRS Section 343-5. The proposed Development does not fall within such specified activities, in that the Development does not:

- a. Propose the use of state or county lands or the use of state or county funds;
- b. Propose any use within any land classified as conservation district by the State Land Use Commission under HRS Chapter 205;
- c. Propose any use within the shoreline area as defined in HRS Section 205A-41;
- d. Propose any use within any historic site as designated in the National Register or Hawaii Register as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or HRS Chapter 6E;
- e. Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the "Waikiki Special District";
- f. Propose any amendments to existing county general plans where such amendment would result in designations other than agriculture, conservation, or preservation;

g. Propose any reclassification of any land classified as conservation district by the State Land Use Commission under HRS Chapter 205;

h. Propose the construction of new, or the expansion or modification of existing, helicopter facilities within the state; or

i. Propose the construction of a wastewater treatment unit, waste-to-energy facility, oil refinery, or power generating facility (which use petroleum based fuels).

SECTION 14. NATIVE HAWAIIAN ISSUES.

14.1 Development's Impacts on Traditional or Cultural Practices. The Development will have no impact on any known traditional or customary practices of native Hawaiians. There are no known traditional or customary practices of native Hawaiians that are presently occurring within the Subject Property that will be affected by the Development. There are no special gathering practices taking place within the portion of the Subject Property where the Development will occur that will be affected. The Development will not detrimentally affect: access to any streams; access to the shoreline or other adjacent shoreline areas; or gathering along any streams, the shoreline or in the ocean. There are no known religious practices taking place within the portion of the Subject Property where the Development will occur. The Development will have no negative impact on any cultural or historic sites or resources located within the Subject Property.

SECTION 15. COMMUNITY CONTACTS.

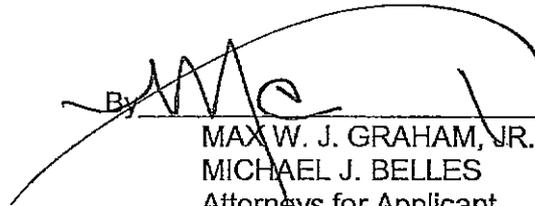
15.1 Contact with Lihue Business Association. The Applicant intends to meet with the Lihue Business Association and to provide its Board with a summary of Applicant's proposal.

SECTION 16. CONCLUSION.

The Applicant respectfully requests that the Planning Commission of the County of Kauai grant the Applicant a Use Permit and a Class IV Zoning Permit, and recommend approval of a Special Permit for the Development.

DATED: Lihue, Kauai, Hawaii, September 30, 2015.

BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP

By 
MAX W. J. GRAHAM, JR.
MICHAEL J. BELLES
Attorneys for Applicant,
SOLARCITY CORPORATION,
a Delaware corporation

In The Matter Of The Application Of SOLARCITY CORPORATION, a Delaware corporation, for a Use Permit, a Class IV Zoning Permit, and a Special Permit for real property situated at Kapai'a, Hanamaulu, Lihue, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 3-8-002:002 (por.); **APPLICATION; EXHIBITS "A"-"F" (KAPAI'A SOLAR PROJECT)**

EXHIBIT LIST

(SolarCity Corporation Application for Use Permit; Class IV Zoning Permit; and Special Permit)
(Kapai'a Solar Facility)

EXHIBIT

A.	<u>AUTHORIZATION</u>	
	Applicant's Authorization	A-1
	Owner's Authorization.....	A-2
B.	<u>TITLE/LEGAL DESCRIPTIONS</u>	
	Limited Warranty Deed.....	B-1
C.	<u>MAPS</u>	
	Location Map	C-1
	Tax Map (2-8-02).....	C-2
	Solar Facility Site Plan.....	C-3
	Zoning Map	C-4
	Land Use District Boundary Map.....	C-5
	General Plan Map.....	C-6
	Soil Survey Maps.....	C-7A & C-7B
	Soil Classification Map.....	C-8
	FIRM (Flood Insurance Rate Map).....	C-9
	Project Area Map	C-10
D.	<u>ADJACENT PROPERTIES</u>	
	Adjacent Property Index	D-1
	Tax Map 3-4-05.....	D-2
	Tax Map 3-4-07.....	D-3
	Tax Map 3-8-01.....	D-4
	Tax Map 3-8-02.....	D-5
	Tax Map 3-8-03.....	D-6
	Tax Map 3-8-04.....	D-7
	Tax Map 3-8-05.....	D-8
	Tax Map 3-9-01.....	D-9
	Tax Map 3-9-02.....	D-10
E.	<u>KIUC PRESS RELEASE</u>	
	KIUC Press Release.....	E-1
F.	<u>PHOTOGRAPHS</u>	
	Aerial Photograph.....	F-1
	Photograph (Figures 19 & 20)	F-2
	Photograph (Figures 21 & 22)	F-3
	Photograph (Figures 23 & 24)	F-4

EXHIBIT "A-1"

APPLICANT'S AUTHORIZATION

I. APPLICANT.

Name: SOLARCITY CORPORATION,
a Delaware corporation

Address: c/o Jeremy Sande, AICP
Environmental Permitting Manager
SolarCity Corporation
100 N. 18th Street, Suite 1900
Philadelphia, Pennsylvania 19103

Telephone: (503) 267-8870

II. AUTHORIZED AGENT.

Name: Max W. J. Graham, Jr., Esq.
Michael J. Belles, Esq.
Belles Graham Proudfoot Wilson & Chun, LLP

Address: 4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766

Telephone: (808) 246-6962

Facsimile: (808) 245-3277

Email: mwg@kauai-law.com
mjb@kauai-law.com

III. PROPERTY.

Lot 1-A-3 (portion)
Hanamaulu, Lihue, Kauai, Hawaii
Kauai Tax Map Key No. (4) 3-8-002:002

IV. AUTHORIZATION.

The Applicant hereby authorizes the Authorized Agent to act on the Applicant's behalf and to file and process on the Applicant's behalf any and all applications necessary to obtain governmental permits relating to the Subject Property, including, but not limited to, the following:

1. Building permits, grading permits, use permits, variance permits, zoning permits, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.
2. Permits issued by the Department of Health of the State of Hawaii.
3. Permits issued by the Board of Land and Natural Resources of the State of Hawaii and/or the Department of Land and Natural Resources of the State of Hawaii.
4. Permits issued by the Land Use Commission of the State of Hawaii.

DATED: 7.30.2015

APPLICANT:

SOLARCITY CORPORATION,
a Delaware corporation

By 
JEREMY SANDE
Its Environmental Permitting Manager

EXHIBIT "A-2"

OWNER'S AUTHORIZATION

I. OWNER.

Name: GROVE FARM COMPANY, INCORPORATED,
a Hawaii corporation

Address: 3-1850 Kaumualii Hwy
Lihue, Kauai, Hawaii 96766

Telephone: (808) 632-2532

II. AUTHORIZED AGENTS.

A. Name: Max W. J. Graham, Jr., Esq.
Michael J. Belles, Esq.
Belles Graham Proudfoot Wilson & Chun, LLP

Address: 4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766

Telephone: (808) 246-6962
Facsimile: (808) 245-3277
Email: mwg@kauai-law.com
mjb@kauai-law.com

b. Name: SolarCity Corporation,
a Delaware corporation
Attention: Mr. Jeremy Sande
Environmental Permitting Manager

Address: 100 N. 18th Street, Suite 1900
Philadelphia, Pennsylvania 19103

Telephone: (503) 267-8870
Email: jsande@solarcity.com

III. PROPERTY.

Lot 1-A-3 (portion)
Hanamaulu, Lihue, Kauai, Hawaii
Kauai Tax Map Key No. (4) 3-8-002:002

IV. AUTHORIZATION.

The Owner hereby authorizes the Authorized Agents to act on the Owner's behalf and to file and process on the Owner's behalf any and all applications necessary to obtain governmental permits relating to the Subject Property, including, but not limited to, the following:

1. Building permits, grading permits, use permits, variance permits, zoning permits, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.
2. Permits issued by the Department of Health of the State of Hawaii.
3. Permits issued by the Board of Land and Natural Resources of the State of Hawaii and/or the Department of Land and Natural Resources of the State of Hawaii.
4. Permits issued by the Land Use Commission of the State of Hawaii.

DATED: 9/28/15

OWNER:

GROVE FARM COMPANY, INCORPORATED,
a Hawaii corporation

By  _____
DAVID HINAZUMI
Its **Vice President**