

OMNIBUS AMENDMENT TO PROJECT DOCUMENTS  
NY DELAWARE II, LLC PROJECT

*THIS OMNIBUS AMENDMENT TO PROJECT DOCUMENTS* is made as of the 5<sup>th</sup> day of March, 2020 (“Omnibus Amendment”) by and between the COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, having its principal offices at 548 Broadway, Monticello, New York 12701 (“Agency”) and NY DELAWARE II, LLC, a New York limited liability company, having its principal offices located at 33 Irving Place, Suite 1090, New York, New York 10003 (“Company”).

*WHEREAS*, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York, as amended, pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the “Act”) as a body corporate and politic and as a public benefit corporation of the State of New York (“State”); and

*WHEREAS*, the Project (as hereinafter defined) was originally designed to be constructed on a 10.04 ± acre of real estate which is a portion of an approximately 63.05 ± acres located at Hospital Road, Town of Delaware (“Town”), County of Sullivan (“County”), State and then identified on the Town tax map as Section 17, Block 1, Lot 2 (“Land”); and

*WHEREAS*, the Land was and is owned by Frank Mustica and Agostino Mustica (“Mustica”) and was leased to Delaware River Solar, LLC (“DRS”) pursuant to a long term ground lease dated as of March 7, 2016 (the “2016 Ground Lease”); and

*WHEREAS*, on or about March 6, 2018, Mustica and DRS executed a Memorandum of Lease, which was recorded in the Office of the Clerk of Sullivan County on March 23, 2018 as Instrument No. 2018-2058; and

*WHEREAS*, on or about October 25, 2017, the Company presented an application (“Application”) to the Agency, a copy of which is on file with the Agency, requesting the Agency’s assistance with respect to a certain project consisting of the construction of an approximately 1.50MW solar photovoltaic electricity generating facility that will be interconnected to the New York State Electric and Gas (“NYSEG”) electrical grid (“Project”). The Project has been completed and is comprised of (a) racking to mount the solar modules; (b) solar modules; (c) inverters and transformers mounted on a concrete inverter pad and (d) assorted electrical components and wiring (collectively, the “Solar Array”); and

*WHEREAS*, on or about January 10, 2018, DRS assigned all of its right, title, interest and obligations in, to and under the 2016 Ground Lease to the Company by Assignment of Lease, made as of January 10, 2018; and

*WHEREAS*, on or about July 29, 2018, DRS and the Company executed a Memorandum of Assignment of Lease, which was recorded in the Office of the Clerk of Sullivan County on December 19, 2018 as Instrument No. 2018-9020; and

*WHEREAS*, on or about March 1, 2018, the Agency and the Company entered into the following documents:

- (i) Agent and Project Agreement (“Agent Agreement”);
- (ii) Bill of Sale to Agency (“Bill of Sale to Agency”);
- (iii) Bill of Sale to Company (“Bill of Sale to Company” together with Bill of Sale to Agency, “Bills of Sale”);
- (iv) Lease to Agency and memorandum thereto (collectively, “2018 Lease Agreement”);
- (v) Leaseback to Company and memorandum thereto (collectively, “2018 Leaseback Agreement”); and
- (vi) Payment in Lieu of Tax Agreement (“2018 PILOT Agreement”).

The documents listed in (i) through (vi) listed above are collectively referred to as the “2018 Project Documents”; and

*WHEREAS*, Mustica and the Company amended the 2016 Ground Lease by that certain First Amendment to Lease Agreement, dated April 26, 2018 (“First Amendment to Lease”); and

*WHEREAS*, contemporaneously with execution of the First Amendment to Lease, Mustica and the Company executed an Amendment to Memorandum of Lease, which was recorded in the Office of the Clerk of Sullivan County on May 22, 2018 as Instrument No. 2018-3548; and

*WHEREAS*, a Subdivision Map was approved by the Town Planning Board on August 15, 2018 and was filed in the Office of the Clerk of Sullivan County on October 15, 2018 as Map No. 15-101 which created the 10.04 acre parcel; and

*WHEREAS*, during the process of constructing the Solar Array, field conditions were encountered which required a minor relocation of racking and solar modules; and

*WHEREAS*, the 10.04 acre parcel was increased in size to an 11.03 acre parcel by that Lot Improvement Map, approved by the Town Planning Board on September 19, 2018 and filed in the Office of the Clerk of Sullivan County on November 15, 2018 as Map No. 15-111; and

*WHEREAS*, to accommodate the minor relocation of components of the Solar Array, Mustica and the Company entered into a Second Amendment to Lease Agreement (“Second Amendment to Lease”), which further amended the 2016 Ground Lease and pursuant to which Mustica now leases to the Company the 11.03 acre parcel more particularly described on Exhibit A, attached hereto; and

*WHEREAS*, contemporaneously with execution of the Second Amendment to Lease, Mustica and the Company executed a 2<sup>nd</sup> Amendment to Memorandum of Lease, which was recorded in the Office of the Clerk of Sullivan County on December 19, 2018 as Instrument No. 2018-9021; and

*WHEREAS*, the Agency and the Company desire to amend the 2018 Project Documents so that the Land description in the 2018 Project Documents is amended to be the 11.03 acre parcel which was leased by Mustica to the Company pursuant to the Second Amendment to Lease; and

*WHEREAS*, the Agency and the Company wish to memorialize the foregoing by entering into this Omnibus Amendment.

*NOW THEREFORE*, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged it is mutually agreed as follows:

1. Amendment of 2018 Project Documents. The 2018 Project Documents are hereby amended to delete the legal description of the 10.04 acre parcel attached to the Bills of Sale, 2018 Lease Agreement and 2018 Leaseback Agreement and to incorporate the description of the 11.03 acre parcel attached hereto as Schedule A in its place and stead.

2. Project Description. The project description in the 2018 Project Documents is hereby deleted and the following inserted in its place and stead:

“an approximately 1.50MW solar photovoltaic electricity generating facility interconnected to the New York State Electric and Gas (“NYSEG”) electrical grid (“Project”). The Project is comprised of (a) racking to mount the solar modules; (b) solar modules; (c) inverters and transformers to mount on a concrete inverter pad and (d) assorted electrical components and wiring (collectively, the “Solar Array”). The Solar Array was constructed on a 11.03 acre parcel of real estate located at Hospital Road, Town of Delaware (“Town”), County of Sullivan (“County”), State and identified on the Town tax map as Section 17, Block 1, Lot 2.2 (“Land”).”

3. Recording Memos. Contemporaneously herewith, the Company and the Agency shall execute and thereafter record in the Office of the Sullivan County Clerk an Amended and Restated Memorandum of Lease to Agency and an Amended and Restated Memorandum of Leaseback to Company to update the legal description.

4. Integration. Except as herein amended, all other terms and conditions of the 2018 Project Documents shall remain in full force and effect.

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*IN WITNESS WHEREOF*, the parties hereto have executed this Omnibus Amendment effective as of the 5<sup>th</sup> day of March, 2020.

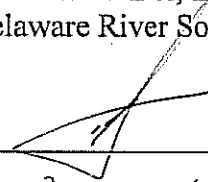
COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY



By: Edward T. Sykes, Chief Executive Officer

NY DELAWARE II, LLC

By: Delaware River Solar, LLC, Sole Member



By:

Richard White

## EXHIBIT A

### Description of Property

309 Hospital Road  
Callicoon, NY 12723  
TAX ID: 17.-1-2

### Description of Premises

**ALL** of that piece or parcel of land situate in the Town of Delaware, County of Sullivan and State of New York, being part of Lot 7 in Division 58 of Great Lot 18 of the Hardenburgh Patent, bounded and described as follows:

**BEGINNING** at a point in the easterly bounds of Hospital Road (Town Highway 31), at its intersection with the northerly line of land of Verl Ringgenberg and Betty Ringgenberg (Liber 2458, Page 679), said place of beginning is further described as being South 80 degrees 35 minutes 20 seconds East 26.42 feet, as measured along the northerly line of said land of Verl Ringgenberg and Betty Ringgenberg, from a point in the centerline of traveled way of said Hospital Road (Town Highway 31), at the common corner of said land of Ringgenberg and land of New York State Electric and Gas Corp. (Deed Liber 629, Page 96), said place of beginning is still further described as being North 80 degrees 35 minutes 20 seconds West 10.18 feet, as measured along the northerly line of said land of Ringgenberg, from a ½" rebar set, and said place of beginning is still further described as located at North 1071581.40 and East 346065.28, per the New York State Plane Coordinate System East Zone (NAD 83).

- 1) Thence from said place of beginning, on a curve to the right having a radius of 460.00 feet and a delta angle of 04 degrees 37 minutes 45 seconds, for an arc distance of 37.17 feet, along said easterly bounds of Hospital Road (Town Highway 31), the chord subtending said arc being North 31 degrees 06 minutes 21 seconds East 37.16 feet, to a point of tangency.
- 2) Thence North 33 degrees 25 minutes 13 seconds East 216.40 feet, continuing on a tangent along said easterly bounds of Hospital Road (Town Highway 31), to a point of curvature.
- 3) Thence continuing along said easterly bounds of Hospital Road (Town Highway 31), on a curve to the left having a radius of 595.00 feet and a delta angle of 19 degrees 20 minutes 20 seconds, for an arc distance of 200.83 feet, the chord subtending said arc being North 23 degrees 45 minutes 03 seconds East 199.88 feet, to a point of tangency.
- 4) Thence North 14 degrees 04 minutes 53 seconds East 140.82 feet, continuing on a tangent along said easterly bounds of Hospital Road, to a point of curvature.

- 5) Thence continuing along said easterly bounds of Hospital Road (Town Highway 31), on a curve to the left having a radius of 1013.91 feet and a delta angle of 08 degrees 41 minutes 12 seconds, for an arc distance of 153.72 feet, the chord subtending said arc being North 09 degrees 44 minutes 16 seconds East 153.57 feet, to a point.
- 6) Thence continuing along said easterly bounds of Hospital Road (Town Highway 31), on a continuation of the last mentioned curve to the left having a radius of 1013.91 feet, with the delta angle of this continuation portion of the curve being 03 degrees 52 minutes 58 seconds, for an arc distance of 68.71 feet, the chord subtending this arc being North 03 degrees 27 minutes 13 seconds East 68.70 feet, to a point of reverse curvature.
- 7) Thence continuing along said easterly bounds of Hospital Road (Town Highway 31), on a reverse curve to the right having a radius of 790.00 feet and a delta angle of 02 degrees 02 minutes 45 seconds, for an arc distance of 28.21 feet, the chord subtending said arc being North 02 degrees 32 minutes 05 seconds East 28.21 feet, to a ½" rebar set.
- 8) Thence through land described in a deed to Frank Mustica and Angelo Degiacomo and Agostino Mustica, for the following seven (7) courses and distances:
  - a) North 75 degrees 02 minutes 17 seconds East 178.12 feet, to a ½" rebar set
  - b) South 80 degrees 33 minutes 54 seconds East 240.02 feet, to a ½" rebar set
  - c) South 55 degrees 43 minutes 45 seconds East 118.31 feet, to a ½" rebar set
  - d) South 09 degrees 53 minutes 40 seconds West 387.84 feet, to a ½" rebar set
  - e) South 54 degrees 53 minutes 25 seconds East 78.50 feet, to a ½" rebar set.
  - f) South 21 degrees 21 minutes 48 seconds West 357.19 feet, to a ½" rebar set
  - g) South 09 degrees 53 minutes 39 seconds West 68.46 feet, to a ½" rebar set in the northerly line of the aforementioned land of Verl Ringgenberg and Betty Ringgenberg (Liber 2458, Page 679).
- 9) Thence North 80 degrees 35 minutes 20 seconds West 655.64 feet, along said northerly line of said land of Verl Ringgenberg and Betty Ringgenberg, to the point or place of beginning.

**CONTAINING** 11.03 acres of land, as surveyed by Gary Packer, P. L. S.

Bearings are per the New York State Plane Coordinate System East Zone (NAD 83)

Being part of the land conveyed by Frederick Urban and Marie Urban to Frank Mustica and Angelo Degiacomo, and Agostino Mustica, as Joint Tenants with rights of survivorship, by deed dated December 23, 1985 and recorded in the Sullivan County Clerk's Office on December 23, 1985 in Deed Liber 1202 at Page 222.