

## LEASE TO AGENCY

*THIS LEASE TO AGENCY* ("Lease Agreement"), effective as of the 13<sup>th</sup> day of December, 2022, is by and between NY MAMAKATING I, LLC, a New York limited liability company, having its principal offices located at 560 Davis Street, Suite 250, San Francisco, California 94111 ("Company") and 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 located at 548 Broadway, Monticello, New York 12701 ("Agency").

### RECITALS

*WHEREAS*, Title 1 of Article 18-A of the General Municipal Law of the State of New York ("Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York ("State"); and

*WHEREAS*, the Enabling Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve its standard of living; and

*WHEREAS*, the Enabling Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable; and

*WHEREAS*, the Agency was created pursuant to and in connection with the provisions of the Enabling Act, Chapter 560 of the Laws of 1970 of the State (collectively, referred to as the "Act") and is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

*WHEREAS*, the Project (as hereinafter defined) shall be constructed on 20± acres of real estate accessed from Barone Road, Town of Mamakating ("Town"), County of Sullivan ("County"), State and a portion of Town tax map Section 26, Block 1, Lot 4.2 ("Land"); and

*WHEREAS*, the Land was leased from Wurtsboro Airport Preservation League, LLC ("WAPL") to Delaware River Solar, LLC ("DRS") pursuant to a Lease Agreement, dated as of September 10, 2020 ("DRS Lease"); and

*WHEREAS*, the DRS Lease was memorialized by a Memorandum of Lease, dated September 10, 2020, which Memorandum of Lease was recorded in the Office of the Clerk of Sullivan County on January 13, 2021 as Instrument No. 2021-491; and

*WHEREAS*, the Land was conveyed by WAPL to NFM Enterprises LLC by Bargain and Sale Deed dated the 5<sup>th</sup> day of February, 2021, which Deed was recorded in the Office of the Clerk of Sullivan County on February 11, 2021 as Instrument No. 2021-1494; and

*WHEREAS*, the DRS Lease was assigned by DRS to the Company by Assignment of Lease Agreement, dated February 2, 2022; and

*WHEREAS*, on or about April 27, 2022, the Company presented an application to the Agency (“Application”), a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project consisting of the construction of an approximately 3MWac solar photovoltaic electricity generating facility that will be interconnected to the Orange & Rockland electrical grid (“Project”). The Project is new construction and will be comprised of (a) racking to mount the solar modules (such racking generally to be pile driven into the ground); (b) solar modules; (c) inverters and transformers to sit on a concrete inverter pad and (d) assorted electrical components and wiring. The solar array will be constructed on the Land; and

*WHEREAS*, by resolution, dated May 9, 2022 (“May Resolution”), the Agency authorized the Company to act as its agent for the purposes of constructing the Project and conferred on the Company certain financial assistance consisting of: (a) an exemption from all State and local sales and use tax for the purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project or used in the construction of the Project, (b) an exemption from mortgage recording tax, and (c) a partial abatement from real property taxes for a period of five (5) years following the statutory exemption from real property taxes under Real Property Tax Law Section 487, which exemption shall be conferred through a certain payment in lieu of tax agreement requiring the Company to make payments in lieu of taxes (“PILOT”) for the benefit of each municipality and school district having taxing jurisdiction over the Project, (collectively, the sales and use tax exemption, the mortgage recording tax exemption, and the partial abatement from real property taxes, are hereinafter collectively referred to as the “Financial Assistance”). Provision of Financial Assistance is subject to the Company entering into this Agreement; and

*WHEREAS*, by resolution, dated December 12, 2022 (“December Resolution” and together with the May Resolution, the “Resolution”), the Agency authorized the Chairperson or Executive Director, each acting individually, to execute and deliver a mortgage in favor of Live Oak Banking Company, in an original principal amount not to exceed \$7,675,000; and

*WHEREAS*, in order to induce the Company to develop the Project, the Agency is willing to enter into a lease/leaseback transaction involving a lease of the Project from the Company to the Agency and a leaseback of the Project from the Agency to the Company; and

*WHEREAS*, the Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to construct the Project in accordance with the plans and specifications presented to the Agency.

*NOW THEREFORE*, in consideration of the foregoing recitals and the mutual terms, conditions, limitations and agreements set forth herein, and other good and valuable

consideration, the receipt and sufficiency of which is hereby acknowledged, it is mutually agreed as follows:

## ARTICLE I

### REPRESENTATIONS AND COVENANTS

1.1. Representations and Covenants of the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) The Agency is duly established under the provisions of the Act and has the power to enter into the transaction contemplated by this Lease Agreement and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Project, the Agency has the authority to take the actions contemplated herein under the Act.
- (b) The Agency has been duly authorized to execute and deliver this Lease Agreement.
- (c) The Agency will lease the Land from the Company pursuant to this Lease Agreement and lease the Land back to the Company pursuant to the Leaseback Agreement of even date herewith ("Leaseback Agreement") and designate the Company as its agent for purposes of the Project, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and the County and improving their standard of living.
- (d) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of the Act or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or will constitute default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Agency under the terms of any such instrument or agreement.
- (e) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to construct the Project and the related jobs resulting therefrom in the County, State.

1.2. Representations and Covenants of the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) The Company is a limited liability company duly organized, existing and in good standing under the laws of the State of New York has the authority to enter into this Lease Agreement and has duly authorized the execution and delivery of this Lease Agreement.

- (b) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Lease Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any restriction or any agreement or instrument to which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company under the terms of any such instrument or agreement.

## ARTICLE II

### DEMISING CLAUSES AND RENTAL PROVISIONS

- 2.1. Agreement to Lease to Agency. The Company has leased or has caused to be leased to the Agency a leasehold interest in the real property, including any buildings, structures or improvements thereon, described in Schedule A attached hereto, and the Company shall procure the equipment to be used for the construction of the Solar Array as agent of the Agency pursuant to the Agent and Project Agreement dated December 13, 2022 by and between the Company and the Agency (“Agent Agreement”). At the Company’s request, the Agency shall convey the Solar Array to the Company pursuant to a bill of sale and the Company has or will lease to the Agency all of its interest in the Solar Array. The Company agrees the Agency's interest in the Project resulting from said conveyances and purchase of equipment as agent of the Agency will be sufficient for the purposes intended by this Lease Agreement and agrees that it will defend, indemnify and hold the Agency harmless from any expense or liability or loss or damage arising out of the lease or a lien adversely affecting the Project (except in each case to the extent arising from any breach by the Agency of its obligations under this Agreement or the Leaseback Agreement) and will pay all reasonable expenses incurred by the Agency in defending any such action.
- 2.2. Demise of Project. The Company hereby demises and leases the Project to the Agency and the Agency hereby rents and leases the Project from the Company upon the terms and conditions of this Lease Agreement.
- 2.3. Remedies to be Pursued Against Contractors and Subcontractors and its Sureties. In the event of a default by any contractor, subcontractor or any other person under any contract made by it in connection with the Project or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance, or guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to them and the Agency, as appropriate, against the contractor, subcontractor, manufacturer, supplier or other person so in default and against such surety for the performance of such contract. The Company in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, manufacturer, supplier or surety or other person which is reasonably necessary, and in such events the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency (including but not limited to reasonable attorneys' fees) in any such action or proceeding.

2.4. Duration of Lease Term; Quiet Enjoyment.

- (a) The Company shall deliver to the Agency possession of the Project (subject to the provisions hereof) and the leasehold estate created hereby shall commence as of the date hereof.
- (b) The leasehold estate created hereby shall terminate the earlier of (i) at 11:59 P.M. on February 15, 2043; (ii) the date on which the Leaseback Agreement is terminated, and (iii) the day immediately following the expiration or earlier termination of the Lease Agreement as set forth under Article VI hereunder.
- (c) The period commencing on the date described in Section 2.4(a) herein through the date described in Section 2.4(b) herein shall be herein defined as the "Lease Term".

2.5. Rents. The rental under this Lease Agreement shall be One and 00/100 (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged by the Company.

2.6. Use; Lease Agreement.

- (a) The Agency shall hold and use the Project only for leaseback to the Company under the Leaseback Agreement and otherwise shall not sell, assign, or encumber its rights hereunder, the leasehold estate created thereby, or the Project, other than as expressly permitted under the Leaseback Agreement.
- (b) Contemporaneously with the execution and delivery of this Lease Agreement, the Agency shall enter into the Leaseback Agreement, pursuant to which the Company as agent of the Agency agrees to undertake and complete the Project. Pursuant to the Leaseback Agreement, the Company, as tenant of the Agency under the Leaseback Agreement, is required to perform all of the Agency's obligations under this Lease Agreement. Accordingly, and notwithstanding anything to the contrary contained in this Lease Agreement, the Company shall not be entitled to declare a default hereunder or exercise any rights or remedies hereunder, if any asserted default by the Agency hereunder relates to a failure by the Company, as tenant of the Agency under the Leaseback Agreement, to perform its corresponding obligations under the Leaseback Agreement.

ARTICLE III

DAMAGE, DESTRUCTION AND CONDEMNATION

3.1. Damage or Destruction.

- (a) If the Project shall be damaged or destroyed (in whole or in part) at any time during the term of this Lease Agreement:

- (i) the Agency shall have no obligation to replace, repair, rebuild or restore the Project;
  - (ii) there shall be no abatement or reduction in the amounts payable by the Company under the Leaseback Agreement; and
  - (iii) the Company shall have all other rights provided by the Leaseback Agreement.
- (b) All such replacements, repairs, rebuilding or restoration made pursuant to this Section 3.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Project as if the same were specifically described herein.

#### ARTICLE IV

##### SPECIAL COVENANTS

- 4.1. Hold Harmless Provisions. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold harmless the Agency, its chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Project or (ii) liability arising from or expense incurred by the Agency's financing, constructing and leasing of the Project to Company, including without limiting the generality of the foregoing, all causes of action and reasonable attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing; except, however, that such indemnities will not be applicable with respect to willful misconduct or gross negligence on the part of the indemnified party. The foregoing indemnities shall apply notwithstanding the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing obligations of the Company shall remain in full force and effect after the termination of this Lease Agreement.

#### ARTICLE V

##### ASSIGNMENTS AND SUBLEASING;

- 5.1. Assignment and Subleasing. This Lease Agreement may not be assigned in whole or in part, and the Project may not be leased, in whole or in part, without the prior written consent of the other Party, except that (i) the Agency shall lease the leasehold interest created hereunder to the Company pursuant to the Leaseback Agreement, (ii) Company may make a collateral assignment of this Lease Agreement to any financing party providing financing to the Project, and (iii) Company may assign this Lease Agreement to any permitted assignee of the Leaseback Agreement.

ARTICLE VI  
TERMINATION

- 6.1 Early Termination of Lease Agreement. The Company shall have the option at any time to terminate this Lease Agreement and the Leaseback Agreement upon filing with the Agency a certificate signed by an authorized representative of the Company stating the Company's intention to do so pursuant to this Section 6.1 and upon compliance with the requirements set forth in Section 6.2 hereof.
- 6.2. Option to Terminate. Upon termination of this Lease Agreement in accordance with Section 6.1 hereof, the Company shall pay to the Agency all sums due to the Agency under Sections 2.6, 3.3 and 3.7 of the Leaseback Agreement and all other sums due under the Leaseback Agreement, in each case to the extent accrued prior to termination ("Termination Payment").
- 6.3. Termination of Lease Agreement.
- (a) Pursuant to Section 6.2 hereof, the Agency shall deliver to the Company all necessary documents to reflect termination of this Lease Agreement and the Leaseback Agreement and conveyance to the Company of all of Agency's right and interest in the Land and the Project, subject only to the following:
    - (i) any liens to which the Project was subject when leased to the Agency,
    - (ii) any liens created at the request of the Company or to the creation of which the Company consented, and
    - (iii) any liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement.
  - (b) The Agency shall release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any net proceeds of insurance or condemnation awards in the event of a total, substantial or partial taking by eminent domain or for any public or quasi-public use under statute, with respect to the Project (specifically excluding all rights of the Agency hereunder including its rights to indemnification hereunder).

ARTICLE VII

GENERAL PROVISIONS

- 7.1. Notices. All notices provided for by this Lease Agreement shall be made in writing, and shall be deemed to have been given on the date of delivery if personally served on the party to whom notice is to be given, or on the next day after mailing if mailed to the party to whom notice is to be given by overnight courier of national reputation providing evidence of receipt and properly addressed, or on the third day after mailing if mailed to the party to whom notice shall be given by First Class, Certified mail, postage prepaid and properly addressed to the following:

If to the Agency:

County of Sullivan Industrial Development Agency  
548 Broadway  
Monticello, New York 12701  
Attn: Executive Director

with a copy to:

Walter F. Garigliano, Esq.  
449 Broadway  
P.O. Drawer 1069  
Monticello, New York 12701-1069

to the Company:

NY Mamakating I, LLC  
560 Davis Street, Suite 250  
San Francisco, California 94111

with a copy to:

Couch White, LLP  
P.O. Box 22222  
540 Broadway, 7<sup>th</sup> Floor  
Albany, New York 12201-2222  
Attn: Joshua A. Sabo, Esq.

or at such other address and/or addresses as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

- 7.2. Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and its respective permitted successors and assigns.
- 7.3. Waiver. No waiver of any of the provisions of this Lease Agreement shall be deemed to or shall constitute a waiver or any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
- 7.4. Severability. If any provision of this Lease Agreement shall be determined to be illegal and unenforceable by any court of law or any competent governmental or other authority, the remaining provisions shall be severable and enforceable in accordance with its terms so long as this Lease Agreement without such terms or provisions does not fail of its essential purpose or purposes. The parties will negotiate in good faith to replace any such illegal or unenforceable provision or provisions with suitable substitute provisions which will maintain the economic purposes and intentions of this Lease Agreement.
- 7.5. Governing Law, Venue. This Lease Agreement shall be governed, construed and enforced in accordance with the laws of the State for contracts to be wholly performed therein. The parties hereby designate a court of proper jurisdiction in Sullivan County, State of New York as the exclusive venue for resolution of any disputes which may arise under or by reason of this Lease Agreement.



- 7.6. Section Headings Not Controlling. The headings of the several sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Lease Agreement.
- 7.7. Recording and Filing. This Lease Agreement, or a memorandum thereof, shall be recorded or filed, as the case may be, in the Office of the Clerk of Sullivan County, State of New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.
- 7.8. No Recourse; Special Obligation. Notwithstanding anything to the contrary contained herein, the obligations and agreements of the Agency and the Company contained herein and in any other agreement executed by the Agency and the Company and in any other instrument or document supplemental thereto executed in connection herewith or therewith shall be deemed the obligation and agreements of the Agency and the Company, and not of any chief executive officer, executive director, director, officer, employee, member, agent (except the Company), representative, or their respective successors and assigns and personal representatives in his or her individual capacity, and the chief executive officer, executive director, directors, officers, employees, members, agents (except the Company), representatives, and their respective successors and assigns and personal representatives of the Agency and the Company shall not be liable personally thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein or therein shall not constitute or give rise to an obligation of the State of New York, the County of Sullivan, or any of the taxing jurisdictions and neither the State of New York, the County of Sullivan, or any of the taxing jurisdictions shall be liable thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute a limited obligation of the Agency payable solely from the Agency's interest in the Project.
- 7.9. Counterparts. This Lease Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.
- 7.10. Entire Agreement. This Lease Agreement together with the Agent and Project Agreement, Lease Agreement, Leaseback Agreement and the Payment In Lieu of Tax Agreement sets forth the entire agreement and understanding between the parties relating to the subject matter hereof and supersedes all prior discussions and negotiations between them. This Lease Agreement may not be amended in any respect except by a written amendment expressly referring to this Lease Agreement and executed by the parties to be bound thereby.

60419-019v4

[Signature Page to Lease to Agency]

IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first written above.

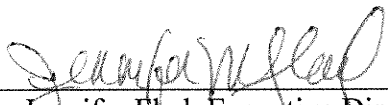
NY MAMAKATING I, LLC  
By: Generate C&I Warehouse II, LLC,  
Its Sole Member

By: Sara Dimitri  
Sara Dimitri

[Signature Page to Lease to Agency]

IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first written above.

COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY

  
\_\_\_\_\_  
By: Jennifer Flad, Executive Director

SCHEDULE A

ALL of that piece or parcel of land situate in the Town of Mamakating, County of Sullivan and State of New York, being more particularly known and designated as being part of Lot 3, on a map entitled "Boundary Adjustment Survey Plat Wurtsboro Airport Preserve League, LLC", dated March 2, 2009, revised March 18, 2009 and filed in the Sullivan County Clerk's Office on April 9, 2009 as Map No. 12-034 A-C, bounded and described as follows:

BEGINNING at a ½" rebar set at the most southerly corner of the hereby described 25.00 acre parcel, said place of beginning is further described as being North 13 degrees 42 minutes 24 seconds East 238.43 feet, from a ½" rebar found at a stonewall corner at the most easterly corner of "PARCEL B" in a deed to Kohl's, Inc. (see Deed Instrument Number 2022-9825), and said place of beginning is still further described as being located at North 1005136.84 and East 503149.33, per the New York State Plane Coordinate System East Zone (NAD 83).

- 1) Thence from said place of beginning North 66 degrees 06 minutes 35 seconds West 302.57 feet, through the aforementioned Lot 3, on a map entitled "Boundary Adjustment Survey Plat Wurtsboro Airport Preserve League, LLC", to a ½" rebar set.
- 2) Thence North 52 degrees 21 minutes 26 seconds West 474.67 feet, continuing through the aforementioned Lot 3, on said map entitled "Boundary Adjustment Survey Plat Wurtsboro Airport Preserve League, LLC", to a ½" rebar set.
- 3) Thence North 35 degrees 45 minutes 17 seconds East 1242.59 feet, continuing through said Lot 3, as shown on said map entitled "Boundary Adjustment Survey Plat Wurtsboro Airport Foundation, Inc.", on a line parallel with and seventy-five (75) feet as measured at right angles in a southeasterly direction from the common line of said Lot 3 and Lot 2 on said map, which Lot 2 is now owned by Wurtsboro Airport Foundation, Inc. (see Deed Liber 3589, Page 60), to a ½" rebar set.
- 4) Thence continuing through said Lot 3, as shown on said map entitled "Boundary Adjustment Survey Plat Wurtsboro Airport Foundation, Inc.", for the following three (3) courses and distances:
  - a) North 89 degrees 35 minutes 26 seconds East 392.17 feet, to a ½" rebar set.
  - b) South 53 degrees 16 minutes 07 seconds East 443.42 feet, to a ½" rebar set
  - c) South 35 degrees 19 minutes 43 seconds West 1419.92 feet, to the point or place of beginning.

CONTAINING 25.00 acres of land, as surveyed by Gary Packer, P. L. S.