

## FIRST AMENDMENT TO PAYMENT IN LIEU OF TAXATION AGREEMENT

*THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAXATION AGREEMENT* ("Amendment"), made as of the 1<sup>st</sup> day of November, 2020 amends that certain Payment in Lieu of Taxation Agreement, dated November 1, 2017 ("Agreement") 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 I, LLC, a New York limited company, having its principal offices located at 140 East 45<sup>th</sup> Street, Suite 32B-1, New York, New York 10017 ("Company").

Unless otherwise defined herein, all capitalized terms shall have the meaning given them in the Agreement.

### 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 a 20.46 ± acre of real estate which is a portion of an approximately 200.74 acres located along Lahm Road, Town of Delaware ("Town"), County of Sullivan ("County"), State and identified on the Town tax map as Section 2, Block 1, Lot 9.1 ("Land"); and

*WHEREAS*, the Land is owned by Bauer Lahm Land, LLC and has been leased to the Company pursuant to a long-term ground lease (the "Ground Lease"); and

*WHEREAS*, 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 2MW solar photovoltaic electricity generating facility that will be interconnected to the New York State Electric and Gas ("NYSEG") electrical grid ("Project"). The Project is new construction and will be comprised of (a) racking to mount the solar modules; (b) solar modules; (c) inverters and transformers to sit on a concrete inverter pad; and (d) assorted electrical components and wiring (collectively, the "Solar Array"). The Solar Array will be constructed on the Land; and

*WHEREAS*, on December 12, 2016, the Agency adopted the Community Distributed Generation Uniform Tax Exemption Policy ("Solar UTEP"); and

*WHEREAS*, on March 13, 2017, the Agency adopted Resolution 13-17 approving the Project; and

*WHEREAS*, on or about November 1, 2017, the Company and the Agency entered into a Payment in Lieu of Taxation Agreement ("PILOT Agreement"); and

*WHEREAS*, on September 14, 2020, the Agency adopted Resolution 45-20 which amends the Solar UTEP (i) to allow for the fixed PILOT payment obligation to be modified as project economics are impacted by the changing NYSEDA regulatory scheme and incentive structure and (ii) to eliminate the variable formula PILOT payment calculation method; and

*WHEREAS*, by request dated October 22, 2020, NY Delaware I Holdco, LLC, the Sole Member of the Company, notified the Agency it desired to amend the PILOT Agreement to eliminate the variable formula PILOT payment calculation method.

*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:

1. Paragraph 2 of the Agreement is hereby deleted and the following in its place and stead:

"2. Agreement to Make Payments in Lieu of Taxes.

(a) RPTL §487 Exemption Period. During the period the Solar Array is otherwise exempt from general ad valorem real property taxes under RPTL §487 (i.e., years 1 to 15), the Company agrees to pay to the Agency at 548 Broadway, Monticello, New York 12701, or at such other address as shall be designated from time to time by the Agency (the "Agency's Offices"), payments in lieu of tax (each a "PILOT Payment") in the amount of Twenty Thousand and 00/100 (\$20,000.00) Dollars; or

(b) RPTL §412-a Exemption Period. During any period the Land and Solar Array are exempt from taxation under §412-a of the RPTL and §874 of the Act (i.e., years 16 to 20), the Company agrees to pay the Agency at the Agency's Offices a PILOT Payment equal to what the real estate taxes on the unimproved Land (without giving effect to any increase to the assessed value associated with the Project) would have been if the Agency was not involved with the Project PLUS Twenty Thousand and 00/100 (\$20,000.00) Dollars."

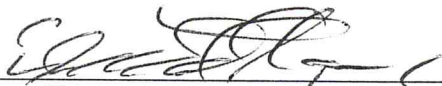
2. Integration. Except as herein amended, all other terms and conditions of the Agreement shall remain in full force and effect. If there shall be any conflict or inconsistency between the terms of this Amendment and the Agreement, the terms of this Amendment shall control

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*IN WITNESS WHEREOF*, the parties hereto have executed this Agreement effective as of the date hereof.

COUNTY OF SULLIVAN INDUSTRIAL  
DEVELOPMENT AGENCY

  
By: Edward T. Sykes, Chief Executive Officer

NY DELAWARE I, LLC

  
By: Richard Winter, Chief Executive Officer