

PAYMENT IN LIEU OF TAX AGREEMENT

THIS AGREEMENT, dated as of the 9 day of January, 2019, is made by and between NY Dryden II, LLC, a limited liability company duly organized and validly existing under the laws of the State of New York, having offices at 33 Irving Place, Suite 1090, New York, New York 10003, (the "Company"), and the TOMPKINS COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its offices at 401 East State Street, Suite 402B, Ithaca, New York 14850 (the "Agency").

WITNESSETH:

WHEREAS, the Agency was created pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended by Chapter 535 of the Laws of 1971, of the State of New York (collectively, the "Act"), as a body corporate of the State of New York, and

WHEREAS, the Agency has been asked to participate in the project whereby it will (i) accept a leasehold interest in the Premises (as defined below) and a solar generation facility ("the Facility") to be constructed thereon by the Company pursuant to the Lease Agreement (the "Lease") dated of even date herewith between the Company and the Agency, and (ii) lease back the Premises and the Facility to the Company pursuant to the Leaseback Agreement (the "Leaseback Agreement") dated of even date herewith, and

WHEREAS, the Premises and the Facility thereon will be exempt from city, county and school real estate taxes pursuant to the laws of the State of New York, and

WHEREAS, the Company, however, has agreed to pay sums of money in lieu of real property taxes,

NOW THEREFORE, in consideration of \$1.00 each to the other in hand paid and receipt of which is hereby acknowledged, and other good and valuable consideration, the parties agree as follows:

(1) (a) The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the General Municipal Law and Section 412-a of the Real Property Tax Law does not entitle the Agency to exemption from special assessments and special *ad valorem* levies, service charges and improvement district charges or similar tax equivalents. Pursuant to the Lease and Leaseback Agreements described herein, the Company is required to pay all special assessments and special *ad valorem* levies, service charges and improvement district charges or similar tax equivalents lawfully levied and/or assessed against the Facility.

(1) (b) It is agreed and understood by the parties that a leasehold interest in the total approximately 11.30-acre premises to be leased by the Company on Dryden Road in the Town of Dryden, Tompkins County, New York (a portion of tax parcel # 47.-1-7.3), upon which a solar energy array is to be installed, has been conveyed to the Agency. As long as the Premises are leased to the Agency and, therefore, exempt from general real property taxation, the Company agrees to pay annually to such Taxing Jurisdictions, i.e., the Town of Dryden, the County of Tompkins, and the Dryden Central School District (or cause any mortgagee to release any escrow for payments hereunder annually to such Taxing Jurisdiction) as a payment in lieu of general real property taxes respecting the conveyed Premises, (i) an amount equal to 100% of the real property taxes which would be due for the Premises but for the leasehold interest of the Agency (but

without reference to, or utilization of, Section 485-b of the Real Property Tax Law of the State of New York) based on the assessment of the total land portion and existing improvements on the conveyed premises prior to installation of the Facility, but excluding therefrom the assessed value of the Facility and other improvements to be constructed thereon, commencing on the first tax status date following the date hereof and (ii) with respect to the portion of the assessed value of the Premises attributable to the Facility and other improvements to be constructed thereon, the following amounts:

<u>YEAR OF EXEMPTION*</u>	<u>PAYMENT MADE</u>
1 2019-20 School; 2020 Town & County	\$ 5,590
2 2020-21 School; 2021 Town & County	\$ 5,702
3 2021-22 School; 2022 Town & County	\$ 5,816
4 2022-23 School; 2023 Town & County	\$ 5,932
5 2023-24 School; 2024 Town & County	\$ 6,051
6 2024-25 School; 2025 Town & County	\$ 6,172
7 2025-26 School; 2026 Town & County	\$ 6,295
8 2026-27 School; 2027 Town & County	\$ 6,421
9 2027-28 School; 2028 Town & County	\$ 6,550
10 2028-29 School; 2029 Town & County	\$ 6,681
11 2029-30 School; 2030 Town & County	\$ 6,814
12 2030-31 School; 2031 Town & County	\$ 6,950
13 2031-32 School; 2032 Town & County	\$ 7,089
14 2032-33 School; 2033 Town & County	\$ 7,231
15 2033-34 School; 2034 Town & County	\$ 7,376
16 2034-35 School; 2035 Town & County	\$ 7,523
17 2035-36 School; 2036 Town & County	\$ 7,674
18 2036-37 School; 2037 Town & County	\$ 7,827
19 2037-38 School; 2038 Town & County	\$ 7,984
20 2038-39 School; 2039 Town & County	\$ 8,144
21 Thereafter	no abatement, full taxes paid

**assumes execution of this PILOT Agreement after March 1, 2018 but prior to March 1, 2019*

(it being understood and agreed that the assessed value of the Facility will not be added to the real property taxes due in respect of the Premises until the first day of March following execution of this agreement, and therefore from the date hereof until such tax status date on the first day of March, the Company shall be obligated to pay or cause to be paid annually to the Taxing Jurisdictions normal real property taxes, as determined without giving effect to the assessed value of the Facility).

In addition, solely in the event that the Company requests a mortgage recording tax exemption from the Agency, the Company agrees to pay on the date of execution and delivery by the Agency of any mortgage on the Facility, as a payment in lieu of mortgage recording tax which would be due in respect of such mortgage on the Facility but for its record ownership by the Agency, a total amount of 3/4 of 1% of the maximum amount secured by any such mortgage, except such amount as reflects repayment of prior indebtedness, to the County of Tompkins and the Town of Dryden, with said amount allocated between them as follows: County of Tompkins: 1/4 of 1%; Town of Dryden: 1/2 of 1%.

(2) (a) Special district charges, special assessments, and special *ad valorem* levies, unless otherwise exempt, and all water and sewer charges, if any, are to be paid in full in accordance with normal billing practices.

(2) (b) The Company shall pay to the Taxing Jurisdictions by February 1 (for exemption year 1, February 1 corresponds to February 1, 2020) the amounts set forth in paragraph 1(b), comprising each Taxing Jurisdiction's proportionate amount of the annual payments set forth in paragraph 1(b)(ii), based on each Taxing Jurisdiction's respective share of the total tax rate that would have been applicable to the assessed value of the Premises attributable to the Facility and other improvements to be constructed thereon by the Company as if they were taxable. (Any special district charge/fee is not included in this calculation.)

(2) (c) If the Company shall fail to make any payment required by this Agreement when due, its obligation to make the payment so in default shall continue as an obligation of the Company until such payment in default shall have been made in full, and the Company shall pay the same together with interest, penalties, fees and costs thereon, to the extent permitted by law, at the same rate per annum as if such amounts were delinquent taxes, until so paid in full.

(3) In the event that the Lease and the Leaseback are terminated, such that the Agency no longer holds a lease hold interest in the Premises and the Facility and can no longer provide exemption from real property taxes, or if for any other reason the Agency can no longer provide exemption from real property taxes as contemplated by this Agreement, the Company will have the right to terminate this Agreement without further liability; provided that if the Facility cannot be added to the assessment roll by the Tompkins County Department of Assessment until the following tax year, and unless the Company is eligible for continued full or partial tax exemption under some other tax incentive program, the Company will pay, no later than the next tax lien date (plus any applicable grace period), to the Taxing Jurisdictions an amount which would have been levied on the Facility with respect to the tax year in which all rights in the Facility have reverted to the Company if the Facility had been classified as fully or partially taxable, as applicable, during such year, *pro rata* for the portion of such year following the date on which rights in the Facility have reverted to the Company.

The Company agrees that in the event the Facility covered by this Agreement is sold, the purchaser or transferee will be required by the Company to continue to make payments in lieu of taxes according to the terms of this Agreement until such time as the Premises and the Facility have been returned to the taxable assessment rolls and payment of property taxes becomes due according to the Real Property Tax Law of the State of New York. Any amounts paid in lieu of taxes will be eligible for proration up to the time of payments of property taxes.

The intent of this paragraph is to ensure that the current and future owners are at all times paying either the payment in lieu of taxes or real estate taxes as assessed from time to time on the property conveyed. There shall be no duplication of payments in any year.

(4) Notwithstanding the leasehold interest of the Agency in the Premises and the Facility, the Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, *ad valorem* levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement.

Agency's leasehold interest in the Facility based on the then-current assessment, to the extent required by applicable law, and (ii) this Agreement will terminate and the Company shall have no further payment obligations under this Agreement.

(6) While the Agency holds a leasehold interest in the Facility, to the extent permitted by law, the Company shall have all of the rights and remedies of a taxpayer with respect to any proposed assessment or change in assessment of the Premises or the Facility by any of the Taxing Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment or the validity or the amount of any tax equivalent provided for herein. The Agency agrees to sign any papers, petitions, notices or other documents to permit the Company to contest assessments of the Project Facility and to otherwise cooperate, at the Company's or tenant's cost, with efforts of the Company or tenant to contest assessments of the Project Facility.

(7) To the extent the Premises or the Facility are declared to be subject to general real property taxation by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company under this Agreement with respect to payments in lieu of tax shall, to such extent, be null and void.

(8) If payments are not made as provided for herein, the Agency and/or the Taxing Jurisdictions, collectively, shall be entitled to pursue any and all remedies afforded a municipal taxing entity at law or in equity.

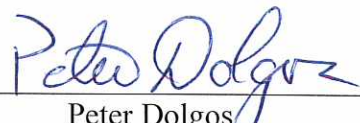
(9) The rights and obligations of the Company hereunder may not be assigned, transferred or assumed without the prior written consent of the Agency which consent shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the 9 day of January, 2019.

TOMPKINS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

NY Dryden II, LLC

By: 
Heather D. McDaniel, Administrative Director

By: 
Name: Peter Dolgos
Title: Senior Vice President

STATE OF NEW YORK)
COUNTY OF TOMPKINS) ss.:

On the 9 day of January, in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared HEATHER D. McDANIEL, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person on behalf of whom the individual acted, executed the instrument.

INA K ARTHUR
NOTARY PUBLIC - STATE OF NEW YORK
NO. 01AR6197582
QUALIFIED IN TOMPKINS COUNTY
COMMISSION EXPIRES DECEMBER 1, 2020



Notary Public

STATE OF New York)
COUNTY OF New York) ss.:

On the 26th day of December, in the year 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared PETER DOLGOS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person on behalf of whom the individual acted, executed the instrument.



Notary Public

Commission expires:

RICHARD W. CHUN
Notary Public, State of New York
No. 02CH6116187
Qualified in Nassau County
Commission Expires September 30, 2020