

## PROJECT AGREEMENT

**THIS PROJECT AGREEMENT** (the "**Project Agreement**"), made as of February 1, 2020, by and between the **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a public benefit corporation organized and existing under the laws of the State of New York, having an office at 800 Starbuck Avenue, Watertown, New York 13601 (the "**Agency**"), and **OYA GREAT LAKES SEAWAY LLC**, a limited liability company organized under the laws of the State of Delaware having its office at 251 Little Falls Drive, Wilmington, Delaware 19808 (the "**Company**").

### WITNESSETH:

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

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "**State**") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of 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 purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

**WHEREAS**, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 369 of the Laws of 1971 of the State as amended (collectively, with the Enabling Act, the "**Act**") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

**WHEREAS**, on or about February 25, 2019, the Company submitted an application, as amended from time to time (the "**Application**") to the Agency requesting the Agency's assistance with respect to a certain project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in vacant land located at 15246 Blanchard Road, Town of Clayton, New York (the "**Land**"); (ii) the construction of solar modules, racking to mount the solar modules, inverters and transformers and assorted electrical components and wiring, all located on the Land (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of fixtures and equipment (the "**Equipment**" and together with the

Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of potential exemptions from real property taxes and mortgage recording taxes (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the construction, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, by resolution of its members adopted on January 9, 2020 (the "**Resolution**"), the Agency authorized certain financial assistance for the benefit of the Project consisting of: (a) exemption from mortgage recording taxes and (b) an abatement from real property taxes through a 15-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively referred to as the "**Financial Assistance**"); and

**WHEREAS**, the Company proposes to lease the Land and Facility to the Agency, and the Agency desires to lease the Land and Facility from the Company pursuant to the terms of a certain Company Lease Agreement dated as of February 1, 2020 (the "**Company Lease**"), by and between the Company and the Agency; and

**WHEREAS**, the Agency proposes to sublease the Project Facility to the Company, and the Company desires to lease the Project Facility from the Agency, upon the terms and conditions set forth in a certain Agency Lease Agreement dated as of February 1, 2020 (the "**Agency Lease**"); and

**WHEREAS**, in order to define the obligations of the Company regarding payments in lieu of taxes for the Project Facility, the Agency and the Company will enter into a Payment in Lieu of Tax Agreement, dated as of February 1, 2020 (the "**PILOT Agreement**"), by and between the Agency and the Company; and

**WHEREAS**, contemporaneously with the execution of this Project Agreement, the Company shall execute and deliver an environmental compliance and indemnification agreement in favor of the Agency (the "**Environmental Compliance and Indemnification Agreement**"); and

**WHEREAS**, by its Resolution, the Agency authorized the Company to act as its agent for the purposes of undertaking the Project ; and

**WHEREAS**, in order to define the obligations of the Company regarding its ability to utilize the Agency's tax exemption benefits as agent of the Agency to acquire, construct, equip and complete the Project Facility and to undertake the Project, the Agency and the Company will enter into this Project Agreement; and

**WHEREAS**, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution and as more particularly described in

the PILOT Agreement and this Project Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

**WHEREAS**, this Project Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

**WHEREAS**, no Financial Assistance shall be provided to the Company prior to the effective date of this Project Agreement.

**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:

## **ARTICLE I PURPOSE OF PROJECT**

**Section 1.01 Recitals.** The foregoing recitals are incorporated herein as if fully set forth. For all purposes of this Project Agreement and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions which is attached to the Agency Lease as Exhibit C thereto except as otherwise expressly defined herein or the context hereof otherwise requires.

**Section 1.02 Purpose of Project.** It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Company Lease, Agency Lease, PILOT Agreement and this Project Agreement (collectively, the "***Project Documents***") in order to, promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping, furnishing and completing of the Project Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the County of Jefferson and to otherwise accomplish the public purpose of the Act.

## **ARTICLE II REAL PROPERTY TAX EXEMPTION**

**Section 2.01. PILOT Agreement.** Attached hereto and made a part hereof as **Exhibit A** is a copy of the PILOT Agreement.

**Section 2.02. Insurance Required.**

(a) The Company agrees that it shall maintain all insurance required under the Agency Lease.

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date of its Sub-Agent Agreement until the expiration or

termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, all of the same insurance with respect to the Project Facility, as set forth in Article 6 of the Agency Lease as if the general contractor were the Company thereunder. The Company further agrees that it shall cause its general contractor for the Project to comply and abide, effective as of the date of the Sub-Agent Agreement and until the expiration or termination of the general contractor's employment by the Company, or its designee, with respect to the Project Facility, with all of the terms and conditions set forth in Article 6 of the Agency Lease with respect to the type, nature and proof of insurance required thereunder.

### **ARTICLE III COMMITMENTS AND REPORTING**

**Section 3.01. Compliance Commitments.** The reporting of, and the commitment to (a) below shall continue for the duration of the PILOT Agreement (the "*Term*"); or if the PILOT is terminated early, until the earlier of five (5) years from the termination date of the PILOT or the stated expiration of the PILOT Agreement:

(a) The Company shall annually provide to the Agency certain information, as requested or required by the Agency, to confirm that the Project is achieving the investment and other objectives of the Project (the "*Reporting Commitment*").

### **ARTICLE IV SUSPENSION, DISCONTINUATION, RECAPTURE AND/OR TERMINATION OF FINANCIAL ASSISTANCE**

**Section 4.01. Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance.** It is understood and agreed by the Parties hereto that the Agency is entering into the Company Lease, the Agency Lease, the PILOT Agreement and this Project Agreement in order to provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act. .

In accordance with the policies of the Agency and the Resolution, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance to the extent any of the following occur (each a "*Deficit*"): .

- Sale or closure of facility;
- Significant change in use in facility;

- Significant change in business activities or project applicant or operator;
- Material noncompliance with or breach of terms of Agency transaction documents or of zoning or land use laws or regulations or federal, state or local environmental laws or regulations; or
- No substantial future economic benefit is likely to accrue to the community.

The Agency shall evaluate, annually as of December 31, or at any time information is brought to the Agency's attention, whether a Deficit (each a "**Noncompliance Event**") has occurred. Notwithstanding the foregoing, the Agency may determine whether an Event of Default has occurred pursuant to any project document in accordance with the terms of the project document.

At the time of any Noncompliance Event, the Agency shall determine by resolution whether to exercise its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance in accordance with its Recapture Policy; and shall consider the following criteria in determining whether to proceed to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance:

- Whether the Company has proceeded in good faith.
- Whether the Project has not performed as required due to economic issues, changes in market conditions or adverse events beyond the control of the Company.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create a more adverse situation for the Company, such as the Company going out of business or declaring bankruptcy, which would not occur if the Agency's rights were not exercised.
- Whether the enforcement by the Agency of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance would create an adverse situation for the residents of the County of Jefferson.
- The assessment prepared in accordance with the Agency's Annual Assessment Policy.
- Such other criteria as the Agency shall determine is a relevant factor in connection with any decision regarding the exercise of its right to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance.

The Agency shall document its evaluation of the above criteria in writing and based upon its evaluation, the Agency shall determine whether to suspend, discontinue, recapture or terminate all or any portion of the Financial Assistance (the "**Determination**"). The Determination shall provide terms, if any, by which the Company may remedy any Noncompliance Event upon which the Determination was based. The Company must submit written documentation to the Agency of compliance with all terms and conditions of the Determination in order for the Agency to consider whether to resume Financial Assistance to the Company (which will be at the Agency's sole discretion).

**ARTICLE V  
MISCELLANEOUS PROVISIONS**

**Section 5.01. Survival.** All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Project Agreement to the Agency regardless of any investigation made by the Agency.

**Section 5.02. Notices.** All notices, certificates and other communications under this Project Agreement shall be in writing and shall be deemed given when delivered personally or when sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service, addressed as follows:

If to the Agency:	Jefferson County Industrial Development Agency 800 Starbuck Avenue Watertown New York 13601 Attn: Chief Executive Officer
With a copy to:	Barclay Damon, LLP 120 Washington St., Suite 500 Watertown, New York 13601 Attn: Joseph W. Russell, Esq.
If to the Company:	OYA Great Lakes Seaway LLC 700 Universe Boulevard Juno Beach, Florida 33408 Attn: Tim Garcia, Senior Business Management Analyst
With a copy to:	NextEra Energy Resources, LLC 700 Universe Boulevard Juno Beach, Florida 33408 Attn: General Counsel

or at such other address 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 received or delivery of same is refused by the recipient or personally delivered in the manner provided in this Section.

**Section 5.03. Amendments.** No amendment, change, modification, alteration or termination of this Project Agreement shall be made except in writing upon the written consent of the Company and the Agency.

**Section 5.04. Severability.** The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Project Agreement or the application thereof shall not affect the validity or enforceability of the remaining portions of this Project Agreement or any part thereof.

**Section 5.05. Counterparts.** This Project 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.

**Section 5.06. Governing Law.** This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Jefferson County, New York.

**Section 5.07. Term.** Except as specifically provided otherwise, the term of this Project Agreement shall be the longer of: (1) the term of the Agency Lease; or (2) five years following the Project's completion date. The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of this Project Agreement.

**Section 5.08. Section Headings.** The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

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**IN WITNESS WHEREOF**, the parties hereto have executed this Project Agreement as of the day and year first above written.

**JEFFERSON COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Donald C. Alexander, CEO

OYA GREAT LAKES SEAWAY LLC

By:   
Matthew G. Ulman, Vice President

STATE OF FLORIDA )  
COUNTY OF Palm Beach ss.:

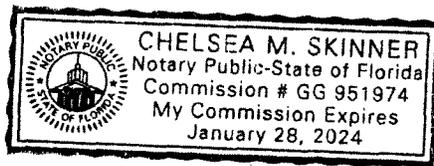
Matthew G. Ulman, being first duly sworn, deposes and says:

1. That I am the Vice President of OYA Great Lakes Seaway LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

  
Matthew G. Ulman

Subscribed and affirmed to me  
under penalties of perjury  
this 14 day of February

  
(Notary Public)



**EXHIBIT A**

**Executed Copy of PILOT Agreement**

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**JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**OYA GREAT LAKES SEAWAY LLC**

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**PAYMENT IN LIEU OF TAX AGREEMENT**

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**DATED AS OF**  
**FEBRUARY 1, 2020**

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**RELATING TO THE PREMISES LOCATED AT**  
**15246 BLANCHARD ROAD, TOWN OF CLAYTON,**  
**COUNTY OF JEFFERSON AND STATE OF NEW YORK**

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## PAYMENT IN LIEU OF TAX AGREEMENT

**THIS PAYMENT IN LIEU OF TAX AGREEMENT** dated as of February 1, 2020 (the "*Payment in Lieu of Tax Agreement*") by and between **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a public benefit corporation organized and existing under the laws of the State of New York, having and office at 800 Starbuck Avenue, Watertown, New York 13601 (the "*Agency*"), and **OYA GREAT LAKES SEAWAY LLC** limited liability company organized under the laws of the State of having its office at 700 University Boulevard, Juno Beach, Florida 33408 (the "*Company*").

### WITNESSETH:

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

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "*State*") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of 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 purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency, for the purpose of carrying out any of its corporate purposes, to lease or sell any or all of its facilities, whether then owned or thereafter acquired; and

**WHEREAS**, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 369 of the Laws of 1971 of the State as amended and constituting section 892-e of the General Municipal Law (collectively, with the Enabling Act, the "*Act*") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

**WHEREAS**, the members of the Agency, adopted a resolution on October 3, 2019 (the "*Preliminary Inducement Resolution*"), pursuant to which the Agency agreed to accept an application (the "*Application*") from the Company and further agreed to consider undertaking a project (the "*Project*") consisting of the following: (A)(i) the acquisition of an interest in vacant land located at 15246 Blanchard Road, Town of Clayton, New York (the "*Land*"); (ii) the construction of solar modules, racking to mount the solar modules, inverters and transformers and assorted electrical components and wiring, all located on

the Land (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of potential exemptions from certain sales and use taxes, real property taxes and mortgage recording taxes (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, installation, equipping and completion of the Project Facility; and (D) the lease of the Land, Facility and Equipment by the Agency pursuant to a lease agreement from the Company to the Agency; and the lease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "**SEQR Act**") and the regulations (the "**Regulations**") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "**SEQRA**"), the Agency adopted an Environmental Resolution on October 3, 2019, and determined that the Project would not have a significant adverse effect on the environment, and issued a negative declaration for the Project, a copy of which was provided to and is binding upon the Agency (the "**SEQRA Determination**"); and

**WHEREAS**, by further resolution adopted by the members of the Agency on January 9, 2020 (the "**Resolution**"), the Agency determined to grant the Financial Assistance and to enter into a lease agreement (the "**Agency Lease**") between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Agency Lease, the "**Basic Documents**"); and

**WHEREAS**, pursuant to the terms of the Agency Lease, (A) the Company will agree (1) to cause the Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company for a lease term ending on the earlier to occur of (1) termination of this PILOT Agreement or (2) the date on which the Agency Lease is terminated pursuant to the optional termination provisions thereof; and

**WHEREAS**, the Agency Lease grants to the Company certain options to acquire the Project Facility from the Agency; and

**WHEREAS**, simultaneously with the execution and delivery of the Agency Lease (the "**Closing**"), (A) the Company will execute and deliver to the Agency a certain lease to agency dated as of February 1, 2020 (the "**Company Lease**") by and between the Company, as landlord and the Agency, as tenant pursuant to which the Company will lease to the Agency the Land and all improvements and Equipment now or hereafter located on the land (collectively, the "**Premises**") for a lease term ending on January 31, 2035, (B) the Company and the Agency will execute and deliver the Payment in Lieu of Tax Agreement,

pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency will file with the assessor and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "**Real Property Tax Exemption Form**") relating to the Project Facility and the Payment in Lieu of Tax Agreement, and (D) the Agency will file with the New York State Department of Taxation and Finance the form entitled "**IDA Appointment of Project Operator or Agent for Sales Tax Purposes**" (the form required to be filed pursuant to Section 874(9) of the Act) (the "**Thirty-Day Sales Tax Report**"); and

**WHEREAS**, under the present provisions of the Act and Section 412-a of the Real Property Tax Law of the State of New York (the "**Real Property Tax Law**"), the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or supervision or control; and

**WHEREAS**, pursuant to the provisions of Section 6.6 of the Agency Lease, the Company has agreed to make payments in lieu of taxes with respect to the Project Facility in an amount equivalent to normal taxes, provided that, so long as this Payment in Lieu of Tax Agreement shall be in effect, the Company shall during the term of this Payment in Lieu of Tax Agreement make payments in lieu of taxes in the amounts and in the manner provided in this Payment in Lieu of Tax Agreement, and during such period the provisions of Section 6.6 of the Agency Lease shall not control the amounts due as payment in lieu of taxes with respect to that portion of the Project Facility which is covered by this Payment in Lieu of Tax Agreement; and

**WHEREAS**, all things necessary to constitute this Payment in Lieu of Tax Agreement a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution and delivery of this Payment in Lieu of Tax Agreement have in all respects been duly authorized by the Agency and the Company;

**NOW, THEREFORE**, in consideration of the matters above recited, the parties hereto formally covenant, agree and bind themselves as follows, to wit:

## **ARTICLE I**

### **REPRESENTATIONS AND WARRANTIES**

#### **SECTION 1.00. RECITALS AND DEFINITIONS.**

The foregoing recitals are incorporated herein as if fully set forth. Terms not otherwise defined herein shall have the meanings ascribed thereto in the Agency Lease,

dated as of February 1, 2020 by and between the Company and the Agency (the "**Agency Lease**").

#### **SECTION 1.01. REPRESENTATIONS OF AND WARRANTIES BY THE AGENCY.**

The Agency does hereby represent, warrant and covenant as follows:

(A) Power. The Agency is a public benefit corporation of the State, has been duly established under the provisions of the Act, is validly existing under the provisions of the Act and has the power under the laws of the State of New York to enter into the transactions contemplated by this Payment in Lieu of Tax Agreement and to carry out the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement hereunder.

(B) Authorization. The Agency is authorized and has the corporate power under the Act, its by-laws and the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all the covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper corporate action on the part of its members, the Agency has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Agency is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by the terms, conditions or provisions of any order, judgment, decree, law, ordinance, rule or regulation of any court or other agency or authority of government, or any agreement or instrument to which the Agency is a party or by which the Agency is bound.

#### **SECTION 1.02. REPRESENTATIONS OF AND WARRANTIES BY THE COMPANY.**

The Company does hereby represent, warrant and covenant as follows:

(A) Power. The Company is a limited liability company duly authorized to do business in the State of New York and has the power under the laws of the State to enter into this Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement, and by proper action of its members has been duly authorized to execute, deliver and perform this Payment in Lieu of Tax Agreement.

(B) Authorization. The Company is authorized and has the power under its articles of organization, operating agreement and the laws of the State to enter into this

Payment in Lieu of Tax Agreement and the transactions contemplated hereby and to perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement. By proper action of its members, the Company has duly authorized the execution, delivery and performance of this Payment in Lieu of Tax Agreement and the consummation of the transactions herein contemplated.

(C) Conflicts. The Company is not prohibited from entering into this Payment in Lieu of Tax Agreement and discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement by (and the execution, delivery and performance of this Payment in Lieu of Tax Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Payment in Lieu of Tax Agreement will not conflict with or violate or constitute a breach of or a default under) the terms, conditions or provisions of its Articles of Organization or Operating Agreement or any other restriction, law, rule, regulation or order of any court or other agency or authority of government, or any contractual limitation, restriction or outstanding indenture, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which the Company is a party or by which it or any of its property is bound, and neither the Company's entering into this Payment in Lieu of Tax Agreement nor the Company's discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Payment in Lieu of Tax Agreement will be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) 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 of the foregoing, and this Payment in Lieu of Tax Agreement is the legal, valid and binding obligation of the Company enforceable in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

(D) Governmental Consent. No consent, approval or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Company is required as a condition to the execution, delivery or performance of this Payment in Lieu of Tax Agreement by the Company or as a condition to the validity of this Payment in Lieu of Tax Agreement.

## ARTICLE II COVENANTS AND AGREEMENTS

### SECTION 2.01. TAX-EXEMPT STATUS OF THE PROJECT FACILITY.

(A) Assessment of the Project Facility. Pursuant to Section 874 of the Act and Section 412-a of the Real Property Tax Law, the parties hereto understand that, upon acquisition of a leasehold interest in the Project Facility by the Agency and the filing by the

Agency of a New York State Board of Real Property Services Form RP-412-a (a "**Real Property Tax Exemption Form**") with respect to the Project Facility, and for so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "**Taxing Entities**", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "**Taxing Entity**") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of the leasehold interest to the Project Facility created by the Agency Lease and the filing of the Real Property Tax Exemption Forms. The Company shall, promptly following acquisition by the Agency of the leasehold interest to the Project Facility created by the Company Lease, take such action as may be necessary to ensure that the Project Facility shall be assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency, including ensuring that a Real Property Tax Exemption Form shall be filed with the appropriate officer or officers of each respective Taxing Entity responsible for assessing properties on behalf of each such Taxing Entity (each such officer being hereinafter referred to as an "**Assessor**"). For so long thereafter as the Agency shall own such leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The parties hereto understand that the Project Facility shall not be entitled to such tax-exempt status on the tax rolls of any Taxing Entity until the first tax year of such Taxing Entity following the tax status date of such Taxing Entity occurring subsequent to the date upon which the Agency becomes the owner of record of such leasehold interest in the Project Facility and the Real Property Tax Exemption Forms are filed with the Assessors. Pursuant to the provisions of the Agency Lease, the Company will be required to pay all taxes and assessments lawfully levied and/or assessed against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt status on the tax rolls of the respective Taxing Entities. The Agency will cooperate with the Company to obtain and preserve the tax-exempt status of the Project Facility.

(B) Special Assessments. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act 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. Pursuant to the Agency Lease, and notwithstanding anything hereto to the contrary, the Company will be required to pay all special assessments and special ad valorem levies lawfully levied and/or assessed against the Project Facility.

## **SECTION 2.02. PAYMENTS IN LIEU OF TAXES.**

(A) Agreement to Make Payments. The Company agrees that it shall make annual payments in lieu of property taxes in the amounts hereinafter provided to the

respective Taxing Entities entitled to receive same pursuant to the provisions hereof. The Company also agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The payments due hereunder shall be paid by the Company to Agency for distribution to the Taxing Entities pursuant to the Agency's Uniform Tax Exemption Policy (the Agency being hereinafter referred to as the "**Receivers of Taxes**").

(B) Valuation of the Project Facility.

(1) The value of the Project Facility for purposes of determining payments in lieu of taxes due hereunder (hereinafter referred to as the "**Assessed Value**") shall be determined by the appropriate Assessors. The Company agrees to give the Assessors a copy of this Payment in Lieu of Tax Agreement. The parties hereto agree that the Assessors shall (a) appraise the Land in the same manner as other similar properties in the general area of the Land, but without giving effect to the Improvements (as defined herein); (b) place an Assessed Value upon the Land, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes, (c) appraise the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "**Improvements**") in the same manner as other similar properties in the general area of the Improvements, and (d) place an Assessed Value upon the Improvements, equalized if necessary by using the appropriate equalization rates as apply in the assessment and levy of real property taxes. The Company shall be entitled to written notice of the initial determination of the Assessed Value of the Improvements and of any change in the Assessed Value of the Land or the Improvements.

(2) If the Company is dissatisfied with the amount of the Assessed Value of the Improvements as initially established or with the amount of the Assessed Value of the Land or the Improvements as changed, and if the Company shall have given written notice of such dissatisfaction to the appropriate Assessor and the Agency within thirty (30) days of receipt by the Company of written notice of the initial establishment of such Assessed Value of the Improvements, or of a change in such Assessed Value of the Land or the Improvements, then the Company shall be entitled to protest before, and to be heard by, the appropriate Assessor and the Agency. If the Agency, the Company and any Assessor shall fail to reach agreement as to the proper Assessed Value of the Project Facility for purposes of determining payments in lieu of taxes due under this Payment in Lieu of Tax Agreement, then the Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Project Facility, with respect to any proposed assessment or change in assessment with respect to the Project Facility by any of the affected Taxing Entities 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. Any payments in lieu of taxes due

upon the Project Facility may not be withheld by the Company pending determination of the Assessed Value by the appropriate tribunal.

(C) Amount of Payments in Lieu of Taxes. The payments in lieu of taxes to be paid by the Company to the Receivers of Taxes annually on behalf of each Taxing Entity pursuant to the terms of this Payment in Lieu of Tax Agreement shall be computed separately for each Taxing Entity as follows:

(1) First, determine the amount of general taxes and general assessments (hereinafter referred to as the "**Normal Tax**") which would be payable to each Taxing Entity if the Land was owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Land determined pursuant to Subsection (B)(1)(a) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Land if the Land was owned by the Company and not the Agency.

(2) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Land shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Land shall be an amount equal to one hundred percent (100%) of the Normal Tax due each Taxing Entity with respect to the Land for such tax year, as determined pursuant to subsection C(1) of this Section 2.02.

(3) Next, determine the Normal Tax which would be payable to each Taxing Entity if the Facility and any portion of the Equipment assessable as real property pursuant to the New York Real Property Tax Law (collectively with the Facility, the "**Improvements**") were owned by the Company and not the Agency by multiplying (a) the Assessed Value of the Improvements determined pursuant to Subsection (B) of this Section 2.02, by (b) the tax rate or rates of such Taxing Entity that would be applicable to the Improvements if the Improvements were owned by the Company and not the Agency. For the avoidance of doubt, determination of the Normal Tax that would be payable with respect to the Improvements under this subsection shall be solely for reference, and the amounts payable by Company as a payment in lieu of tax with respect to Improvements under this Payment in Lieu of Tax Agreement will be determined in accordance with subsection (4) below.

(4) Notwithstanding the foregoing, specific reference is made to the Table at Schedule "1" to this Agreement, which forms the basis for the calculation of the annual PILOT Payments by the Agency. In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which the Improvements shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes

on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Improvements shall be in the amounts reflected on the following table with respect to the Improvements:

Tax Year Commencing During Fiscal Year	Total PILOT Payment
1	\$35,000.00
2	\$33,404.58
3	\$32,818.97
4	\$32,233.35
5	\$31,647.74
6	\$31,062.12
7	\$30,476.51
8	\$29,890.90
9	\$29,305.28
10	\$28,719.67
11	\$28,134.05
12	\$27,548.44
13	\$26,962.83
14	\$26,377.21
15	\$25,791.60
16 and thereafter	100% of Normal Taxes

(5) In each tax year during the term of this Payment in Lieu of Tax Agreement, commencing on the first tax year following the date on which any portion of the Project Facility shall be assessed as exempt on the assessment roll of any Taxing Entity, the amount payable by the Company to the Receivers of Taxes on behalf of each Taxing Entity as a payment in lieu of property tax pursuant to this Payment in Lieu of Tax Agreement with respect to the Project Facility shall be the sum of (a) the amount due each Taxing Entity with respect to the Land for such tax year, as determined pursuant to Subsection (C)(2) of this Section 2.02, **plus** (b) the amount due each Taxing Entity with respect to the Improvements for such tax year, as determined pursuant to Subsection (C)(4) of this Section 2.02.

(6) The parties recognize that the purpose of the Project is to create or retain permanent private sector jobs in Jefferson County. Accordingly, the parties have agreed that the amount of payments in lieu of taxes payable with respect to the Addition Premises shall bear a direct relationship to the success or lack of success of the Project in achieving this goal. Therefore, as specific inducement for Agency entering into this Payment in Lieu of Tax Agreement, the Company shall retain and create the average number of full time equivalent employees (1820 hours equaling one full time equivalent employee ) employed at the Project Facility or equivalent jobs set forth within the Company's Application, during the term of this Payment in

Lieu of Tax Agreement. The Company pledges commercially reasonable efforts to hire persons from the Jefferson County, New York work force. The Company shall promptly provide employment figures to the Agency as requested.

(D) Additional Amounts in Lieu of Taxes. Commencing on the first tax year following the date on which Battery Storage is added to the Project Facility ("**Additional Facilities**") the Company agrees to make additional annual payments in lieu of property taxes with respect to such Additional Facilities (such additional payments being hereinafter collectively referred to as "**Additional Payments**") to the Receivers of Taxes with respect to such Additional Facilities, as follows:

Year	Additional Payments
1	\$1,809.10
2	\$1,772.92
3	\$1,737.46
4	\$1,702.71
5	\$1,668.66
6	\$1,635.28
7	\$1,602.58
8	\$1,570.53
9	\$1,539.12
10	\$1,508.33
11	\$1,478.17
12	\$1,448.60
13	\$1,419.63
14	\$1,391.24
15	\$1,363.41

(E) Statements. Pursuant to Section 858(15) of the Act, the Agency agrees to give each Taxing Entity a copy of this Payment in Lieu of Tax Agreement within fifteen (15) days of the execution and delivery hereof, together with a request that a copy hereof be given to the appropriate officer or officers of the respective Taxing Entities responsible for preparing the tax rolls for said Tax Entities (each, a "**Tax Billing Officer**") and a request that said Tax Billing Officers submit to the Company and to the appropriate Receiver of Taxes periodic statements specifying the amount and due date or dates of the payments due each Taxing Entity hereunder, such periodic statements to be submitted to the Company at approximately the times that tax bills are mailed by such Taxing Entities.

(F) Time of Payments. The Company agrees to pay the amounts due hereunder to the Receivers of Taxes for the benefit of each particular Taxing Entity in any fiscal tax year to the appropriate Receiver of Taxes within the period that such Taxing Entity allows payment of taxes levied in such fiscal tax year without penalty. The Company shall be entitled to receive receipts for such payments. Unless otherwise indicated by the Tax

Billing Office for said Tax Entities, the Company agrees to pay annually to the Receiver of Taxes as a payment in lieu of taxes, on or before September 1 of each year beginning February 1, 2021, and thereafter February 1 of each year during the term hereof for School, County and Town Taxes, respectively, an amount equal to the annual PILOT Payments.

(G) Method of Payment. All payments by the Company hereunder shall be paid to the Receivers of Taxes in lawful money of the United States of America. The Receivers of Taxes shall in turn distribute the amounts so paid to the various Taxing Entities entitled to same.

### **SECTION 2.03 CREDIT FOR TAXES PAID.**

(A) Amount of Credit. The parties hereto acknowledge and agree that the obligation of the Company to make the payments provided in Section 2.02 of this Payment in Lieu of Tax Agreement shall be in addition to any and all other taxes and governmental charges of any kind whatsoever which the Company may be required to pay under the Agency Lease. It is understood and agreed, however, that, should the Company pay in any fiscal tax year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other governmental charges of a similar nature levied and/or assessed upon the Project Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including, by way of example, (1) sales and use taxes, and (2) special assessments, special ad valorem levies or governmental charges in the nature of utility charges, including but not limited to water, solid waste, sewage treatment or sewer or other rents, rates or charges), then the Company's obligation to make payments in lieu of property taxes attributed to such fiscal tax year to such Taxing Entity hereunder shall be reduced by the amounts which the Company shall have so paid to such Taxing Entity in such fiscal tax year, but there shall be no cumulative or retroactive credit as to any payment in lieu of property taxes due to any other Taxing Entity or as to any payment in lieu of property taxes due to such Taxing Entity in any other fiscal tax year.

(B) Method of Claiming Credits. If the Company desires to claim a credit against any particular payment in lieu of tax due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provision of this Section 2.03, said notice to be given by the Company at least thirty (30) days prior to the date on which such payment in lieu of tax is due pursuant to the provisions of Section 2.02(G) hereof. In the event that the governing body of the appropriate Taxing Entity desires to contest the Company's right to claim such credit, then said governing body, the Agency and the Company shall each select an arbitrator in accordance with the rules of the American Arbitration Association, each of whom shall meet the qualifications set forth in Section 2.02(B) hereof, which arbitrators shall, at the sole cost and expense of the Company, determine whether the Company is entitled to claim any credit pursuant to the provisions of this Section 2.03 and, if so, the amount of the credit to which the Company is entitled. It is understood that the arbitrators are empowered to confirm the amount of the credit claimed by the Company or to

determine a lower or higher credit. When the Company shall have given notice, as provided herein, that it claims a credit, the amount of any payment in lieu of property taxes due hereunder against which the credit may be claimed may be withheld (to the extent of the credit claimed by the Company, but only to the extent that such credit may be claimed against said payment in lieu of taxes pursuant to the provisions of this Section 2.03) until the decision of the arbitrators is rendered. After the decision of the arbitrators is rendered, the payment in lieu of taxes due with respect to any reduction or disallowance by the arbitrators in the amount of the credit claimed by the Company shall, to the extent withheld as aforesaid, be immediately due and payable and shall be paid by the Company within thirty (30) days of said decision.

#### **SECTION 2.04. LATE PAYMENTS.**

(A) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(B) Thereafter. If the Company shall fail to make any payment required by this Payment in Lieu of Tax Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the Company to the affected Taxing Entity until such payment in default shall have been made in full, and the Company shall pay the same to the affected Taxing Entity together with (1) a late payment penalty of one percent (1%) per month for each month, or part thereof, that the payment due hereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per month, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

### **ARTICLE III LIMITED OBLIGATION**

#### **SECTION 3.01. NO RECOURSE; LIMITED OBLIGATION OF THE AGENCY.**

(A) No Recourse. All obligations, covenants, and agreements of the Agency contained in this Payment in Lieu of Tax Agreement shall be deemed to be the obligations, covenants, and agreements of the Agency and not of any member, officer, agent, servant or employee of the Agency in his individual capacity, and no recourse under or upon any obligation, covenant or agreement contained in this Payment in Lieu of Tax Agreement, or otherwise based upon or in respect of this Payment in Lieu of Tax Agreement, or for any claim based thereon or otherwise in respect thereof, shall be had against any past, present or future member, officer, agent (other than the Company), servant or employee, as such, of the Agency or any successor public benefit corporation or political subdivision or any person executing this Payment in Lieu of Tax Agreement on behalf of the Agency, either

directly or through the Agency or any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement, it being expressly understood that this Payment in Lieu of Tax Agreement is a corporate obligation, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any such member, officer, agent (other than the Company), servant or employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Payment in Lieu of Tax Agreement under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every such member, officer, agent (other than the Company), servant or employee under or by reason of the obligations, covenants or agreements contained in this Payment in Lieu of Tax Agreement or implied therefrom are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Payment in Lieu of Tax Agreement by the Agency.

(B) Limited Obligation. The obligations, covenants and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or Jefferson County, New York, and neither the State of New York nor Jefferson County, New York shall be liable thereon, and further such obligations, covenants and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights, as defined in the Agency Lease).

(C) Further Limitation. Notwithstanding any provision of this Payment in Lieu of Tax Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (1) the Agency shall have been requested to do so in writing by the Company, and (2) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any of its members, officers, agents, servants or employees) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity and an agreement from the Company to defend and hold harmless the Agency satisfactory to the Agency for protection against all such liability, however remote, and for the reimbursement of all such fees, expenses and other costs.

## ARTICLE IV EVENTS OF DEFAULT

### SECTION 4.01. EVENTS OF DEFAULT.

Any one or more of the following events shall constitute an event of default under this Payment in Lieu of Tax Agreement, and the terms "*Event of Default*" or "*default*" shall

mean, whenever they are used in this Payment in Lieu of Tax Agreement, any one or more of the following events:

(A) Failure of the Company to pay when due any amount due and payable by the Company pursuant to this Payment in Lieu of Tax Agreement and continuance of said failure for a period of fifteen (15) days after written notice to the Company stating that such payment is due and payable;

(B) Failure of the Company to observe and perform any other covenant, condition or agreement on its part to be observed and performed hereunder (other than as referred to in paragraph (A) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company specifying the nature of such failure and requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the breach of covenant, condition or agreement within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default, it being agreed that no such extension shall be for a period in excess of ninety (90) days in the aggregate from the date of default;

(C) Any warranty, representation or other statement by or on behalf of the Company contained in this Payment in Lieu of Tax Agreement shall prove to have been false or incorrect in any material respect on the date when made or on the effective date of this Payment in Lieu of Tax Agreement and (1) shall be materially adverse to the Agency at the time when the notice referred to below shall have been given to the Company and (2) if curable, shall not have been cured within thirty (30) days after written notice of such incorrectness shall have been given to a responsible officer of the Company, provided that if such incorrectness cannot reasonably be cured within said thirty-day period and the Company shall have commenced action to cure the incorrectness within said thirty-day period and, thereafter, diligently and expeditiously proceeds to cure the same, such thirty-day period shall be extended for so long as the Company shall require, in the exercise of due diligence, to cure such default; or

(D) A default under the Company Lease, the Agency Lease or the Project Agreement.

#### **SECTION 4.02. REMEDIES ON DEFAULT.**

(A) General. Whenever any Event of Default shall have occurred with respect to this Payment in Lieu of Tax Agreement, the Agency (or if such Event of Default concerns a payment required to be made hereunder to any Taxing Entity, then with respect to such Event of Default such Taxing Entity) may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the

performance and observance of the obligations, agreements and covenants of the Company under this Payment in Lieu of Tax Agreement.

(B) Cross-Default. In addition, an Event of Default hereunder shall constitute an event of default under Article X of the Agency Lease. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Agency Lease, among other remedies, the right to terminate the Agency Lease and convey the Project Facility to the Company, thus subjecting the Project Facility to immediate full taxation pursuant to Section 520 of the Real Property Tax Law of the State.

(C) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(D) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Payment in Lieu of Tax Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

#### **SECTION 4.03. PAYMENT OF ATTORNEY'S FEES AND EXPENSES.**

Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Payment in Lieu of Tax Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, pay to the Agency or such Taxing Entity, as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

#### **SECTION 4.04. REMEDIES; WAIVER AND NOTICE.**

(A) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Payment in Lieu of Tax Agreement or now or hereafter existing at law or in equity or by statute.

(B) Delay. No delay or omission in exercising any right or power accruing upon the occurrence of any Event of Default hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

(C) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Payment in Lieu of Tax Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Payment in Lieu of Tax Agreement.

(D) No Waiver. In the event any provision contained in this Payment in Lieu of Tax Agreement should be breached by any party and thereafter duly waived by the other party so empowered to act, such waiver shall be limited to the particular breach so waived and shall not be deemed to be a waiver of any other breach hereunder. No waiver, amendment, release or modification of this Payment in Lieu of Tax Agreement shall be established by conduct, custom or course of dealing.

## **ARTICLE V MISCELLANEOUS**

### **SECTION 5.01. TERM.**

(A) General. This Payment in Lieu of Tax Agreement shall become effective and the obligations of the Company shall arise absolutely and unconditionally upon the approval of this Payment in Lieu of Tax Agreement by resolution of the Agency and the execution and delivery of this Payment in Lieu of Tax Agreement by the Company and the Agency. Unless otherwise provided by amendment hereof, this Payment in Lieu of Tax Agreement shall continue to remain in effect until the earlier to occur of (1) the termination of this PILOT Agreement or (2) the date on which the Project Facility is reconveyed by the Agency to the Company pursuant to Article VII of the Agency Lease.

(B) Extended Term. In the event that (1) the Project Facility shall be reconveyed to the Company, (2) on the date on which the Company obtains the Agency's interest in the Project Facility, the Project Facility shall be assessed as exempt upon the assessment roll of any one or more of the Taxing Entities, and (3) the fact of obtaining title to the Agency's interest in the Project Facility shall not immediately obligate the Company to make pro-rata tax payments pursuant to legislation similar to Chapter 635 of the 1978 Laws of the State (codified as subsection 3 of Section 302 of the Real Property Tax Law and Section 520 of the Real Property Tax Law), this Payment in Lieu of Tax Agreement shall remain in full force and effect and the Company shall be obligated to make payments to the Receiver of Taxes in amounts equal to those amounts which would be due from the Company to the respective Taxing Entities if the Project Facility were owned by the Company and not the Agency until the first tax year in which the Company shall appear on the tax rolls of the

various Taxing Entities having jurisdiction over the Project Facility as the legal owner of record of the Project Facility.

#### **SECTION 5.02. FORM OF PAYMENTS.**

The amounts payable under this Payment in Lieu of Tax Agreement shall be payable in such coin and currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

#### **SECTION 5.03. COMPANY ACTS.**

Where the Company is required to do or accomplish any act or thing hereunder, the Company may cause the same to be done or accomplished with the same force and effect as if done or accomplished by the Company.

#### **SECTION 5.04. AMENDMENTS.**

This Payment in Lieu of Tax Agreement may not be effectively amended, changed, modified, altered or terminated except by an instrument in writing executed by the parties hereto.

#### **SECTION 5.05. NOTICES.**

(A) General. All notices, certificates or other communications hereunder shall be in writing and may be personally served, telecopied or sent by courier service or United States mail and shall be sufficiently given and shall be deemed given when (1) delivered in person or by courier to the applicable address stated below, (2) when received by telecopy or (3) three business days after deposit in the United States, by United States mail (registered or certified mail, postage prepaid, return receipt requested, property addressed), or (4) when delivered by such other means as shall provide the sender with documentary evidence of such delivery, or when delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

(B) Notices Given by Taxing Entities. Notwithstanding the foregoing, notices of assessment or reassessment of the Project Facility and other notices given by a Taxing Entity under Article II hereof shall be sufficiently given and shall be deemed given when given by the Taxing Entity in the same manner in which similar notices are given to owners of taxable properties by such Taxing Entity.

(C) Addresses. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

OYA Great Lakes Seaway LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408  
Attn: Tim Garcia, Senior Business Management Analyst

WITH A COPY TO:

Hodgson Russ LLP  
605 Third Ave., Suite 2300  
New York, New York 10158  
Attn: Daniel A. Spitzer, Esq.

IT TO AGENCY:

Jefferson County Industrial Development Agency  
800 Starbuck Avenue  
Watertown, New York 13601  
Attn: Chief Executive Officer

WITH A COPY TO:

Barclay Damon LLP  
120 Washington Street, Suite 500  
Watertown, New York 13601  
Attn: Joseph W. Russell, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

IF TO THE AGENCY:

Jefferson County Industrial Development Agency  
800 Starbuck Avenue  
Watertown, New York 13601  
Attention: Chief Executive Officer

WITH A COPY TO:

Barclay Damon LLP  
120 Washington Street, Suite 500  
Watertown, New York 13601  
Attn: Joseph W. Russell, Esq.

(D) Copies. A copy of any notice given hereunder by the Company which affects in any way a Taxing Entity shall also be given to the chief executive officer of such Taxing Entity.

(E) Change of Address. The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

#### **SECTION 5.06. BINDING EFFECT.**

This Payment in Lieu of Tax Agreement shall inure to the benefit of, and shall be binding upon, the Agency, the Company and their respective successors and assigns. The provisions of this Payment in Lieu of Tax Agreement are intended to be for the benefit of the Agency and the respective Taxing Entities.

#### **SECTION 5.07. SEVERABILITY.**

If any article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion of this Payment in Lieu of Tax Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction, such article, section, subdivision, paragraph, sentence, clause, phrase, provision or portion so adjudged invalid, illegal or unenforceable shall be deemed separate, distinct and independent and the remainder of this Payment in Lieu of Tax Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such holding or adjudication.

#### **SECTION 5.08. COUNTERPARTS.**

This Payment in Lieu of Tax Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

#### **SECTION 5.09. APPLICABLE LAW.**

This Payment in Lieu of Tax Agreement shall be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the Agency and the Company have caused this Payment in Lieu of Tax Agreement to be executed in their respective names by duly authorized officers thereof, all being done as of the date first above written.

**JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

BY:   
Donald C. Alexander, CEO

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

On the 20<sup>th</sup> day of February, 2020, before me, the undersigned, a notary public in and for said state, personally appeared **Donald C. Alexander** 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 he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

JOSEPH W. RUSSELL 4834336  
Notary Public, State of New York  
Qualified in Jefferson County  
Commission Expires April 30, 2023

OYA GREAT LAKES SEAWAY LLC

By:   
Matthew G. Ulman, Vice President

STATE OF FLORIDA            )  
  ) ss.:  
COUNTY OF Palm Beach )

On the 14 day of February, 2020, before me, the undersigned, a notary public in and for said state, personally appeared **Matthew G. Ulman**, 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 he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



  
Notary Public

## EXHIBIT A

**ALL THAT PARCEL OF LAND** located in the Town of Clayton, County of Jefferson and State of New York, bounded and described as follows:

**BEGINNING** at a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12 at the west corner of the parcel of land conveyed to James Mellowship and Patty Mellowship (Instrument 2004-00008671); and runs thence, from the point of beginning, South 46 degrees 18 minutes 37 seconds. East, 231.00 feet, along the southwest line of Mellowship, to an existing iron pipe at the south corner thereof, said iron pipe also being in the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west; thence South 05 degrees 33 minutes 41 seconds East, 4,224.80 feet, along the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west, to a point at its intersection with the north line of the 88 acre parcel of land conveyed to Philip J. Randazzo and Mary S. Randazzo, Trustees of the Randazzo Family Trust (Instrument 2004-00013490); thence South 86 degrees 06 minutes 23 seconds West, 123.21 feet, along the north line of said 88 acre Randazzo Family Trust parcel, to a 5/8 inch rebar with red plastic cap set at the southeast corner of the parcel of land conveyed to Beth Kolakowski, et al. (Instrument 2004-00015485), said rebar with cap set being South 26 degrees 36 minutes 42 seconds East, 1,613.18 feet from an existing iron pipe at the southeast corner of the parcel of land conveyed to Matthew D. Bassett and Donna E. Bassett (Instrument 2007-00019567); thence North 26 degrees 36 minutes 42 seconds West, 3,251.27 feet, along the northeast line of Kolakowski, et al., passing through the last described iron pipe, to and along the northeast line of Bassett, generally along wire fence ruins in part, to a 5/8 inch rebar with red plastic cap set at the southwest corner of the parcel of land conveyed to Niagara Mohawk Power Corporation (Liber 694, Page 378), said rebar with cap set being South 78 degrees 05 minutes 18 seconds West, 3.37 feet, from an existing iron pipe; thence North 78 degrees 05 minutes 18 seconds East, 241.06 feet, along the south line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set at the southeast corner thereof; thence North 11 degrees 54 minutes 42 seconds West, 957.19 feet, along the east line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12; thence North 78 degrees 16 minutes 07 seconds East, 219.42 feet, along the southeast highway boundary of New York State Route 12, to a point; thence generally northeasterly continuing along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,394.00 feet, an arc distance of 339.99 feet, to a concrete highway monument, said monument being North 71 degrees 02 minutes 36 seconds East, 339.15 feet from the last described point; thence North 73 degrees 12 minutes 09 seconds East, 147.86 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence North 31 degrees 25 minutes 42 seconds East, 71.18 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence generally northeasterly along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,398.33 feet, an arc distance of 334.95 feet to the point of beginning, said point of beginning being

North 48 degrees 29 minutes 58 seconds East, 334.15 feet from the last described concrete monument, containing 77.87 acres of land, more or less.

The above described parcel being part of the lands conveyed from Bruce Shaw to Leland Bruce Shaw a/k/a Bruce Shaw as Trustee of the Leland Bruce Shaw a/k/a Bruce Shaw Irrevocable Trust Agreement by deed dated April 16, 2013 and recorded in the Jefferson County Clerk's Office on April 25, 2013 as Instrument 2013-00005835.

Subject to a Sewer Easement granted by Leland Bruce Shaw, a/k/a Bruce Shaw as Trustee of the Leland Bruce Shaw, a/k/a Bruce Shaw Irrevocable Trust Agreement to the Town of Clayton by deed dated January 23, 2014 and recorded in the Jefferson County Clerk's Office on February 20, 2014 as Instrument 2014-00001837.

Subject to an Easement, 100 feet in width, granted by Bruce Shaw to Niagara Mohawk Power Corporation by deed dated June 08, 1960 and recorded in the Jefferson County Clerk's Office on June 24, 1960 in Liber 694 of Deeds, at Page 380.

Subject to the rights of the public in and to that portion of Blanchard Road contained within the above described premises as it is used for highway purposes.

Together with and subject to rights, covenants, easements, rights of way and restrictions of record.

Schedule 1

OYA Project - Great Lakes Seaway

Project inputs in Yellow		Project Size & FMV from Appraisal			Pro-Rata Distribution First Year										
		Project	Project Size (MW) AC	FMV No Incentives	PILOT First Year										
					Pro-Rata										
Total Project MW AC	5	Site 1	5	\$ 4,470,000.00	Town of Clayton \$ 2,627.20										
Project FMV	\$ 4,470,000.00	Site 2	0	\$ -	Clayton Special Districts \$ 3,767.23										
Straight Line Depreciation Term	25	Site 3	0	\$ -	T.I. Central School \$ 19,197.28										
Generation Per Year KWH (From Appraisal)	\$ 10,950.00	Site 4	0	\$ -	T.I Central (Library) \$ 809.68										
PPA \$/MWH (From Appraisal Report)	\$ 83.70	Site 5	0	\$ -	County \$ 13,175.52										
NYSERDA Recommendation of 3%	\$ 5,499.09	Total	5	\$ 4,470,000.00	Total Special Districts \$ 4,576.90										
PILOT inputs		Tax Rates (\$/1,000)			Pro-Rata										
Discount Rate	8%	Town of Clayton		\$ 1.45443	0.075063										
PILOT Duration (Years)	15	Clayton Special Districts		\$ 0.84278											
Proposed PILOT \$/Mw	\$ 5,499.09	T.I. Central School		\$ 10.62770	0.548494										
Yearly Escalation %	2.0%	T.I Central (Library)		\$ 0.18114											
First Year Declining \$/MW	\$ 7,000.00	County		\$ 7.29403	0.376444										
				Total Tax Rate	\$ 20.40008										
Year	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Depreciated Value (Straight Line)	\$ 4,470,000.00	\$ 4,291,200.00	\$ 4,112,400.00	\$ 3,933,600.00	\$ 3,754,800.00	\$ 3,576,000.00	\$ 3,397,200.00	\$ 3,218,400.00	\$ 3,039,600.00	\$ 2,860,800.00	\$ 2,682,000.00	\$ 2,503,200.00	\$ 2,324,400.00	\$ 2,145,600.00	\$ 1,966,800.00
Total Yearly Declining Amount	\$ 35,000.00	\$ 33,404.58	\$ 32,818.97	\$ 32,233.35	\$ 31,647.74	\$ 31,062.13	\$ 30,476.51	\$ 29,890.90	\$ 29,305.28	\$ 28,719.67	\$ 28,134.05	\$ 27,548.44	\$ 26,962.83	\$ 26,377.21	\$ 25,791.60
\$/MW AC	\$ 7,000.00	\$ 6,680.92	\$ 6,563.79	\$ 6,446.67	\$ 6,329.55	\$ 6,212.43	\$ 6,095.30	\$ 5,978.18	\$ 5,861.06	\$ 5,743.93	\$ 5,626.81	\$ 5,509.69	\$ 5,392.57	\$ 5,275.44	\$ 5,158.32
NPV	\$263,830.84														
Full Taxation (Project Life)	\$ 91,188.32	\$ 83,064.48	\$ 79,603.46	\$ 76,142.44	\$ 72,681.42	\$ 69,220.40	\$ 65,759.38	\$ 62,298.36	\$ 58,837.34	\$ 55,376.32	\$ 51,915.30	\$ 48,454.28	\$ 44,993.26	\$ 41,532.24	\$ 38,071.22
\$/MW AC	\$ 17,305.10	\$ 16,612.90	\$ 15,920.69	\$ 15,228.49	\$ 14,536.28	\$ 13,844.08	\$ 13,151.88	\$ 12,459.67	\$ 11,767.47	\$ 11,075.26	\$ 10,383.06	\$ 9,690.86	\$ 8,998.65	\$ 8,306.45	\$ 7,614.24
NPV	\$574,879.96														
Tax Abatement	52%	52%	51%	50%	49%	48%	46%	45%	43%	41%	38%	36%	33%	29%	25%
Average Tax Abatement Over 15 Years	43%														

**OYA GREAT LAKES SEAWAY LLC**

**AND**

**JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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**COMPANY LEASE AGREEMENT**

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**DATED AS OF**  
**FEBRUARY 1, 2020**

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## COMPANY LEASE AGREEMENT

**THIS COMPANY LEASE AGREEMENT** (the "**Company Lease**") is a sub-lease agreement, made and entered into as of February 1, 2020, by and between **OYA GREAT LAKES SEAWAY LLC** (the "**Company**"), a limited liability company organized under the laws of the State of Delaware with an office at 251 Little Falls Drive, Wilmington, Delaware 19808 and **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "**Agency**"), a public benefit corporation of the State of New York, with offices at 800 Starbuck Avenue, Watertown, New York 13601

### WITNESSETH:

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

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages, and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip, and dispose of land and any buildings or other improvements, 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 purposes, in order to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State of New York and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

**WHEREAS**, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 369 of the Laws of 1971 of the State of New York as amended (collectively with the Enabling Act, the "**Act**") and is empowered under the Act to undertake the Project (as hereinafter defined); and

**WHEREAS**, the Agency, by resolution adopted on January 9, 2020 (the "**Resolution**"), agreed to undertake a certain project (the "**Project**") at the request of the Company consisting of: (A)(i) the acquisition of an interest in vacant land located at 15246 Blanchard Road, Town of Clayton, New York (the "**Land**"); (ii) the construction of solar modules, racking to mount the solar modules, inverters and transformers and assorted electrical components and wiring, all located on the Land (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of fixtures and equipment (the "**Equipment**") and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of potential exemptions from, real

property taxes and mortgage recording taxes (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the construction, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Company has a valid and enforceable leasehold interest in the Land and Facility; and

**WHEREAS**, the Agency proposes to assist the Company's acquisition, construction, installation and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company as its agent with respect to the Project Facility; (2) accepting an interest in the Project Facility from the Company pursuant to this Company Lease dated as of February 1, 2020; and (3) subleasing the Project Facility to the Company pursuant to an agency lease agreement from the Agency to the Company dated as of February 1, 2020 (the "**Agency Lease**"); and

**WHEREAS**, the Agency now proposes to lease the Land and Facility from the Company pursuant to the terms and conditions herein set forth; and

**WHEREAS**, all things necessary to constitute this Company Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution, and delivery of this Company Lease have, in all respects, been duly authorized;

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree, and bind themselves as follows:

## **ARTICLE I RECITALS AND DEFINITIONS**

### **SECTION 1.0 RECITALS.**

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

### **SECTION 1.1 DEFINITIONS.**

For all purposes of this Company Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions which is attached to the Agency Lease as Exhibit C thereto except as otherwise expressly defined herein or the context hereof otherwise requires.

## **SECTION 1.2 INTERPRETATION.**

In this Company Lease, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder," and any similar terms as used in this Company Lease refer to this Company Lease; the term "heretofore" shall mean before and the term "hereafter" shall mean after the date of this Company Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Company Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Company Lease.

## **ARTICLE II DEMISE; PREMISES; TERM**

### **SECTION 2.1 DEMISE.**

The Company hereby leases its interests to the Agency, and the Agency hereby leases from the Company, the Land and the improvements thereon, described in **Exhibit A** attached hereto, for the stated term, rents, covenants and conditions set forth herein subject only to the Permitted Encumbrances.

### **SECTION 2.2 DESCRIPTION OF PREMISES LEASED.**

The leased premises is the Land described in the recitals of this Company Lease and as more fully described on **Exhibit A** attached hereto.

### **SECTION 2.3 TERM.**

The Project Facility is leased for a term which shall commence as of the execution of this Agreement, and shall end on the expiration or earlier termination of the Agency Lease.

### **SECTION 2.4 MANDATORY CONVEYANCE.**

At the expiration of the term hereof or any extension thereof by mutual agreement, or as otherwise provided in the Agency Lease, this Company Lease shall automatically expire without any further action by the parties hereto, and the Agency shall, upon the Company's request, confirm in writing the termination of its interest in the Project Facility under this Company Lease and the Agency Lease. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of

executing, delivery and recording terminations of lease and a bill of sale to the Company, together with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project.

#### **SECTION 2.5 CONSIDERATION.**

The Agency shall pay to the Company annually as rent, the sum of \$1.00.

#### **SECTION 2.6 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, is duly authorized to do business in the State, has the power to enter into this Company Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Company Lease and the other Company Documents.

(b) This Company Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(c) The Company is the present owner of the Project Facility.

(d) Neither the execution and delivery of this Company Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the articles of organization or operating agreement;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty, or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(e) So long as the Agency holds an interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and

the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project Facility not to constitute a "project" (as such quoted term is defined in the Act).

(f) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction, equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(g) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to the Agency Lease, this Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants, and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this subsection 2.6(g).

### **ARTICLE III DISPUTE RESOLUTION**

#### **SECTION 3.1 GOVERNING LAW.**

This Company Lease shall be governed in all respects by the laws of the State.

#### **SECTION 3.2 WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS COMPANY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS COMPANY LEASE.

### **ARTICLE IV MISCELLANEOUS CLAUSES**

#### **SECTION 4.1 NOTICES.**

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall



instrument executed by the party against whom enforcement of the change, modification or discharge is sought.

#### **SECTION 4.4 AGENCY REPRESENTATIONS.**

The Company expressly acknowledges that neither the Agency nor the Agency's agents has made or is making, and the Company, in executing and delivering this Company Lease or the Agency Lease, is not relying upon warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Company Lease or the Agency Lease.

#### **SECTION 4.5 BINDING EFFECT.**

This Company Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

#### **SECTION 4.6 SECTION HEADINGS.**

Section headings are for convenience of reference only and shall not control, or affect the meaning of, or be taken as an interpretation of, any provision of this Company Lease.

#### **SECTION 4.7 SEVERABILITY.**

If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall for any reason be held, or shall in fact be, inoperative, unenforceable, or contrary to law in any particular circumstance, such circumstance shall not render the provision in question inoperative or unenforceable in any other circumstance. Further, if any one or more of the sentences, clauses, paragraphs, or sections herein is contrary to law, then such covenant(s) or agreement(s) shall be deemed severable of remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Company Lease.

#### **SECTION 4.8 HOLD HARMLESS PROVISIONS.**

(a) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for, and agrees to indemnify, defend, and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims arising as a result of the Agency's undertaking the Project, including, but not limited to:

(1) Liability for loss or damage to Property or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the leasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under the Agency Lease or this Company Lease;

(3) All claims arising from the exercise by the Company of the authority conferred upon it and performance of the obligations assumed under Article II hereof;

(4) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees.

The foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct) on the part of the Agency or any of its officers, members, agents (other than the Company), servants or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents (other than the Company), or employees by any employee of the Company, or any contractor of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) Notwithstanding any other provisions of this Company Lease, the obligations of the Company pursuant to this Section 4.8. shall remain in full force and effect after the termination of the Agency Lease and this Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company) or employees relating thereto.

#### **SECTION 4.9 NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity; and the

members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or 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 New York or of the County of Jefferson , and neither the State of New York nor the County of Jefferson shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 4.9 shall not alter the full force and effect of any Event of Default under the Agency Lease.

#### **SECTION 4.10 MERGER OF AGENCY.**

(a) Nothing contained in this Company Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and politic and public instrumentality of the

State of New York, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Company Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

#### **SECTION 4.11 EVENT OF DEFAULT.**

A default in the performance or the observance of any covenants, conditions, or agreements on the part of the Company in this Company Lease, the Agency Lease, the PILOT Agreement or the Project Agreement, and, if notice is required pursuant to the terms of each such agreement, the continuance thereof for a period of thirty (30) days after written notice is given by the Agency, or, if such covenant, condition, or agreement is capable of cure but cannot reasonably be cured within such thirty-day notice period, the failure of the Company to commence to cure within such thirty-day period and to prosecute the same with due diligence and cure the same within an additional thirty (30) days.

#### **SECTION 4.12 REMEDIES.**

Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

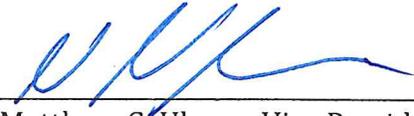
(1) Terminate the Company Lease, the Agency Lease and the PILOT Agreement; or

(2) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder.

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IN WITNESS WHEREOF, the Company and the Agency have duly executed this Company Lease, as of the day and year first above written.

OYA GREAT LAKES SEAWAY LLC

By:   
Matthew G. Ulman, Vice President

STATE OF FLORIDA            )  
  ) ss.:  
COUNTY OF Palm Beach )

On the 14 day of February, 2020, before me, the undersigned, a notary public in and for said state, personally appeared **Matthew G. Ulman**, 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 he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



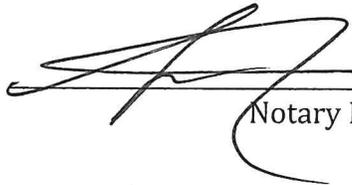
  
\_\_\_\_\_  
Notary Public

**JEFFERSON COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Donald C. Alexander, CEO

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

On the 20<sup>th</sup> day of February, 2020, before me, the undersigned, a notary public in and for said state, personally appeared **Donald C. Alexander**, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
Notary Public

JOSEPH W. RUSSELL, 4834336  
Notary Public, State of New York  
Qualified in Jefferson County  
Commission Expires April 30, 2023

## EXHIBIT A

**ALL THAT PARCEL OF LAND** located in the Town of Clayton, County of Jefferson and State of New York, bounded and described as follows:

**BEGINNING** at a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12 at the west corner of the parcel of land conveyed to James Mellowship and Patty Mellowship (Instrument 2004-00008671); and runs thence, from the point of beginning, South 46 degrees 18 minutes 37 seconds. East, 231.00 feet, along the southwest line of Mellowship, to an existing iron pipe at the south corner thereof, said iron pipe also being in the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west; thence South 05 degrees 33 minutes 41 seconds East, 4,224.80 feet, along the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west, to a point at its intersection with the north line of the 88 acre parcel of land conveyed to Philip J. Randazzo and Mary S. Randazzo, Trustees of the Randazzo Family Trust (Instrument 2004-00013490); thence South 86 degrees 06 minutes 23 seconds West, 123.21 feet, along the north line of said 88 acre Randazzo Family Trust parcel, to a 5/8 inch rebar with red plastic cap set at the southeast corner of the parcel of land conveyed to Beth Kolakowski, et al. (Instrument 2004-00015485), said rebar with cap set being South 26 degrees 36 minutes 42 seconds East, 1,613.18 feet from an existing iron pipe at the southeast corner of the parcel of land conveyed to Matthew D. Bassett and Donna E. Bassett (Instrument 2007-00019567); thence North 26 degrees 36 minutes 42 seconds West, 3,251.27 feet, along the northeast line of Kolakowski, et al., passing through the last described iron pipe, to and along the northeast line of Bassett, generally along wire fence ruins in part, to a 5/8 inch rebar with red plastic cap set at the southwest corner of the parcel of land conveyed to Niagara Mohawk Power Corporation (Liber 694, Page 378), said rebar with cap set being South 78 degrees 05 minutes 18 seconds West, 3.37 feet, from an existing iron pipe; thence North 78 degrees 05 minutes 18 seconds East, 241.06 feet, along the south line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set at the southeast corner thereof; thence North 11 degrees 54 minutes 42 seconds West, 957.19 feet, along the east line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12; thence North 78 degrees 16 minutes 07 seconds East, 219.42 feet, along the southeast highway boundary of New York State Route 12, to a point; thence generally northeasterly continuing along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,394.00 feet, an arc distance of 339.99 feet, to a concrete highway monument, said monument being North 71 degrees 02 minutes 36 seconds East, 339.15 feet from the last described point; thence North 73 degrees 12 minutes 09 seconds East, 147.86 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence North 31 degrees 25 minutes 42 seconds East, 71.18 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence generally northeasterly along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,398.33 feet, an arc distance of 334.95 feet to the point of beginning, said point of beginning being North 48

degrees 29 minutes 58 seconds East, 334.15 feet from the last described concrete monument, containing 77.87 acres of land, more or less.

The above described parcel being part of the lands conveyed from Bruce Shaw to Leland Bruce Shaw a/k/a Bruce Shaw as Trustee of the Leland Bruce Shaw a/k/a Bruce Shaw Irrevocable Trust Agreement by deed dated April 16, 2013 and recorded in the Jefferson County Clerk's Office on April 25, 2013 as Instrument 2013-00005835.

Subject to a Sewer Easement granted by Leland Bruce Shaw, a/k/a Bruce Shaw as Trustee of the Leland Bruce Shaw, a/k/a Bruce Shaw Irrevocable Trust Agreement to the Town of Clayton by deed dated January 23, 2014 and recorded in the Jefferson County Clerk's Office on February 20, 2014 as Instrument 2014-00001837.

Subject to an Easement, 100 feet in width, granted by Bruce Shaw to Niagara Mohawk Power Corporation by deed dated June 08, 1960 and recorded in the Jefferson County Clerk's Office on June 24, 1960 in Liber 694 of Deeds, at Page 380.

Subject to the rights of the public in and to that portion of Blanchard Road contained within the above described premises as it is used for highway purposes.

Together with and subject to rights, covenants, easements, rights of way and restrictions of record.

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**OYA GREAT LAKES SEAWAY LLC**

**AS LANDLORD**

**AND**

**JEFFERSON COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY,  
AS TENANT**

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**MEMORANDUM OF COMPANY LEASE**

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**DATED AS OF  
FEBRUARY 1, 2020**

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**RELATING TO THE PREMISES LOCATED AT  
15246 BLANCHARD ROAD IN THE TOWN OF CLAYTON,  
JEFFERSON COUNTY, NEW YORK.**

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**THIS DOCUMENT IS INTENDED TO BE RECORDED IN LIEU OF  
THE WITHIN-DESCRIBED COMPANY LEASE IN ACCORDANCE  
WITH THE PROVISIONS OF SECTION 291-c OF THE NEW  
YORK REAL PROPERTY LAW.**

## MEMORANDUM OF COMPANY LEASE

The undersigned, **OYA GREAT LAKES SEAWAY LLC**, a limited liability company organized and existing under the laws of the State of Delaware, having an address at 251 Little Falls Drive, Wilmington, Delaware 19808 (the "**Company**"), as landlord (referred to in the hereinafter described Company Lease as the "**Company**") and **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 800 Starbuck Avenue, Watertown, New York (referred to in the hereinafter described Company Lease as the "**Agency**") have entered into a certain lease to agency dated as of February 1, 2020 (the "**Agency Lease**").

The Company Lease covers an approximately 77.87 acre parcel of land (the "**Facility Parcel**") comprising of the premises located at 15246 Blanchard Road, in the Town of Clayton, Jefferson County, New York, said Facility Parcel being more particularly described on Exhibit "A" attached hereto and made a part hereof, together with a five (5) megawatt photo-voltaic community energy generation and distribution facility and any additional improvements located on the Facility Parcel (the "**Facility**", and together with the Facility Parcel being sometimes collectively referred to as the "**Facility Premises**").

The Company Lease provides for the rental of the Facility Premises for a term (the "**Term**") commencing as of February 1, 2020 and expiring on the earlier to occur of (A) termination of the PILOT Agreement or (B) the termination of the term of a lease agreement dated as of February 1, 2020 (the "**Lease Agreement**") by and between the Agency and the Company. The Company Lease obligates the Agency, among other things, to pay rent of \$1.00 for the Term.

Pursuant to the Lease Agreement, the Company, as agent of the Agency, has agreed to improve the Facility Premises by constructing and installing certain improvements thereto (collectively with the Facility Premises, the "**Project Facility**"). The Lease Agreement grants to the Company various rights to purchase the Project Facility. Upon any such purchase of the Project Facility, the Agency shall surrender and deliver the Facility Premises and all improvements located thereon to the Company. The Lease Agreement (or a memorandum thereof) is intended to be recorded in the Jefferson County Clerk's Office subsequent to the recording of this Memorandum of Company Lease.

Notwithstanding the lease of the Project Facility by the Agency to the Company pursuant to the Lease Agreement, during the term of the Company Lease, there shall be no merger of the Company Lease nor of the leasehold estate created by the Company Lease with the fee estate in the Facility Premises or any part thereof by reason of the fact that the same person or entity may acquire, own or hold the Company Lease or the leasehold estate created thereunder and the fee estate in the Facility Premises.

IN WITNESS WHEREOF, the Company and the Agency have caused this Memorandum of Company Lease to be executed in their respective names by their respective duly authorized officers and to be dated as of the day and year first written above.

**JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:   
Donald C. Alexander, CEO

**OYA GREAT LAKES SEAWAY LLC**

By:   
Matthew G. Ulman, Vice President

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

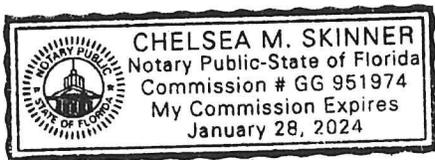
On the 20<sup>th</sup> day of February, 2020 before me, the undersigned, a notary public in and for said State, personally appeared **Donald C. Alexander**, personally known to me or proved to me on the basis of satisfactory evidence to be the Individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the Instrument.

  
Notary Public

JOSEPH W. RUSSELL, 4834336  
Notary Public, State of New York  
Qualified in Jefferson County  
Commission Expires April 30, 2023

STATE OF FLORIDA )  
COUNTY OF Palm Beach ) ss.:

On the 14 day of February, 2020, before me, the undersigned, a notary public in and for said State, personally appeared **Matthew G. Ulman**, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the Instrument.



  
Notary Public

## EXHIBIT "A"

**ALL THAT PARCEL OF LAND** located in the Town of Clayton, County of Jefferson and State of New York, bounded and described as follows:

**BEGINNING** at a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12 at the west corner of the parcel of land conveyed to James Mellowship and Patty Mellowship (Instrument 2004-00008671); and runs thence, from the point of beginning, South 46 degrees 18 minutes 37 seconds. East, 231.00 feet, along the southwest line of Mellowship, to an existing iron pipe at the south corner thereof, said iron pipe also being in the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west; thence South 05 degrees 33 minutes 41 seconds East, 4,224.80 feet, along the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west, to a point at its intersection with the north line of the 88 acre parcel of land conveyed to Philip J. Randazzo and Mary S. Randazzo, Trustees of the Randazzo Family Trust (Instrument 2004-00013490); thence South 86 degrees 06 minutes 23 seconds West, 123.21 feet, along the north line of said 88 acre Randazzo Family Trust parcel, to a 5/8 inch rebar with red plastic cap set at the southeast corner of the parcel of land conveyed to Beth Kolakowski, et al. (Instrument 2004-00015485), said rebar with cap set being South 26 degrees 36 minutes 42 seconds East, 1,613.18 feet from an existing iron pipe at the southeast corner of the parcel of land conveyed to Matthew D. Bassett and Donna E. Bassett (Instrument 2007-00019567); thence North 26 degrees 36 minutes 42 seconds West, 3,251.27 feet, along the northeast line of Kolakowski, et al., passing through the last described iron pipe, to and along the northeast line of Bassett, generally along wire fence ruins in part, to a 5/8 inch rebar with red plastic cap set at the southwest corner of the parcel of land conveyed to Niagara Mohawk Power Corporation (Liber 694, Page 378), said rebar with cap set being South 78 degrees 05 minutes 18 seconds West, 3.37 feet, from an existing iron pipe; thence North 78 degrees 05 minutes 18 seconds East, 241.06 feet, along the south line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set at the southeast corner thereof; thence North 11 degrees 54 minutes 42 seconds West, 957.19 feet, along the east line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12; thence North 78 degrees 16 minutes 07 seconds East, 219.42 feet, along the southeast highway boundary of New York State Route 12, to a point; thence generally northeasterly continuing along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,394.00 feet, an arc distance of 339.99 feet, to a concrete highway monument, said monument being North 71 degrees 02 minutes 36 seconds East, 339.15 feet from the last described point; thence North 73 degrees 12 minutes 09 seconds East, 147.86 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence North 31 degrees 25 minutes 42 seconds East, 71.18 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence generally northeasterly along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,398.33 feet, an arc distance of 334.95 feet to the point of beginning, said point of beginning being

North 48 degrees 29 minutes 58 seconds East, 334.15 feet from the last described concrete monument, containing 77.87 acres of land, more or less.

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Subject to the rights of the public in and to that portion of Blanchard Road contained within the above described premises as it is used for highway purposes.

Together with and subject to rights, covenants, easements, rights of way and restrictions of record.

**JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**OYA GREAT LAKES SEAWAY LLC**

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**AGENCY LEASE AGREEMENT**

---

**DATED AS OF**  
**FEBRUARY 1, 2020**

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## AGENCY LEASE AGREEMENT

**THIS AGENCY LEASE AGREEMENT**, dated as of February 1, 2020 (the "**Agency Lease**"), by and between the **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a public benefit corporation organized and existing under the laws of the State of New York, having and office at 800 Starbuck Avenue, Watertown, New York 13601 (the "**Agency**"), and **OYA GREAT LAKES SEAWAY LLC**, a limited liability company organized under the laws of the State of Delaware having its office at 251 Little Falls Drive, Wilmington, Delaware 19808 (the "**Company**").

### WITNESSETH:

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

**WHEREAS**, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages, and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip, and dispose of land and any buildings or other improvements, 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 purposes, in order to advance the job opportunities, health, general prosperity, and economic welfare of the people of the State and to improve their standard of living; and

**WHEREAS**, the Enabling Act further authorizes each such agency to lease or sell any or all of its properties, to mortgage and pledge any or all of its properties, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof; and

**WHEREAS**, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 369 of the Laws of 1971 of the State of New York as amended (collectively with the Enabling Act, the "**Act**") and is empowered under the Act to undertake the Project (as hereinafter defined); and

**WHEREAS**, the Agency, by resolution adopted on January 9, 2020, agreed, at the request of the Company to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in vacant land located at 15246 Blanchard Road, Town of Clayton, New York, as more fully described in Exhibit A hereto (the "**Land**"); (ii) the construction of solar modules, racking to mount the solar modules, inverters and transformers and assorted electrical components and wiring, all located on the Land (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project**");

*Facility*"); (B) the granting of certain financial assistance in the form of potential exemptions from , real property taxes and mortgage recording taxes (except as limited by Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the construction, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement ; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, the Agency proposes to assist the Company's acquisition, construction, installation and equipping of the Project Facility and grant the Financial Assistance to the Project by, among other things: (1) appointing the Company and/or its designee as its agent with respect to completing the Project; (2) accepting a leasehold interest in the Land and the Facility from the Company; and (3) subleasing the Project Facility to the Company pursuant to this Agency Lease; and

**WHEREAS**, the Company is the current owner of the Project Facility; has a valid and enforceable leasehold interest in the Land and Facility; and has leased the Land and the Facility to the Agency pursuant to the Company Lease Agreement dated as of (the "**Company Lease**"); and

**WHEREAS**, the Agency now proposes to sublease the Project Facility to the Company pursuant to the terms and conditions herein set forth; and

**WHEREAS**, all things necessary to constitute this Agency Lease a valid and binding agreement by and between the parties hereto in accordance with the terms hereof have been done and performed, and the creation, execution, and delivery of this Agency Lease have, in all respects, been duly authorized.

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

## **ARTICLE I RECITALS AND DEFINITIONS**

### **SECTION 1.0 RECITALS**

The foregoing recitals are incorporated herein by reference as if fully set forth hereinbelow.

### **SECTION 1.1 - DEFINITIONS.**

For all purposes of this Agency Lease and any agreement supplemental thereto, all defined terms indicated by the capitalization of the first letter of such term shall have the meanings specified in the Table of Definitions attached hereto as **Exhibit C** except as otherwise expressly defined herein or the context hereof otherwise requires.

## **SECTION 1.2 - INTERPRETATION.**

In this Agency Lease, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "herein," "hereunder," and any similar terms as used in this Agency Lease refer to this Agency Lease; the term "heretofore" shall mean before and the term "hereafter" shall mean after the date of this Agency Lease;

(b) Words of masculine gender shall mean and include correlative words of feminine and neuter genders, and words importing the singular number shall mean and include the plural number and vice versa; and

(c) Any certificates, letters, or opinions required to be given pursuant to this Agency Lease shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law, or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Agency Lease.

## **ARTICLE II REPRESENTATIONS AND COVENANTS**

### **SECTION 2.1 - REPRESENTATIONS OF THE AGENCY.**

The Agency makes the following representations to the Company 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 this Agency Lease and to carry out its obligations hereunder. Based upon the representations of the Company as to the utilization of the Project Facility, the Project will constitute a "project," as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver, and perform this Agency Lease and the other Agency Documents.

(b) Neither the execution and delivery of this Agency Lease, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions of this Agency Lease and the other Agency Documents by the Agency will conflict with or result in a breach by the Agency of any of the terms, conditions, or provisions of the Act, the By-Laws of the Agency, or any order, judgment, restriction, agreement, or instrument to which the Agency is a party or by which it is bound or will constitute a default by the Agency under any of the foregoing.

(c) The Agency is acquiring a leasehold interest in and to the Land and the Facility under the Company Lease and the Agency shall have no ownership interest, nor shall it assert any ownership interest, including but not limited for federal or other tax purposes, in and to the Project Facility.

(d) This Agency Lease and the other Agency Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Agency, enforceable in accordance with their respective terms.

## **SECTION 2.2 - REPRESENTATIONS AND COVENANTS OF THE COMPANY.**

The Company acknowledges, represents, warrants and covenants to the Agency as follows:

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, is authorized to do business in the State of New York, has the power to enter into this Agency Lease and the other Company Documents and to carry out its obligations hereunder and thereunder, and has duly authorized the execution, delivery, and performance of this Agency Lease and the other Company Documents.

(b) This Agency Lease and the other Company Documents constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms.

(c) The Company is the present fee owner of the Project Facility and shall remain the fee owner of the Project Facility for the term of this Agency Lease.

(d) The Project is not primarily used in making retail sales to customers who personally visit the Facility.

(e) Neither the execution and delivery of this Agency Lease and the other Company Documents, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the provisions thereof will:

(1) Result in a breach of, or conflict with any term or provision in, the Company's articles of organization and operating agreement;

(2) Require consent under (which has not been heretofore received) or result in a breach of or default under this Agency Lease, any credit agreement, indenture, purchase agreement, mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which the Company or any of its property may be bound or affected; or

(3) Conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction, or decree of any Governmental Authority or court (domestic or foreign) having jurisdiction over the Company or any of the property of the Company.

(f) The providing of Financial Assistance to the Project by the Agency:

(1) Has been an important consideration in the Company's decision to acquire, construct, install and equip the Project Facility in the County of Jefferson;

(2) Will not result in the removal of an industrial or manufacturing plant or commercial activity of any Project Facility occupant from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of any user, occupant, or proposed user or occupant of the Project Facility located within the State, except as permitted by the Act; and

(3) Will help eliminate blight and advance job opportunities, prosperity, and standard of living and help prevent economic deterioration.

(g) So long as the Agency holds a leasehold interest in the Project Facility, the Project Facility is and will continue to be a "project" (as such quoted term is defined in the Act), and the Company will not take any action (or omit to take any action required by the Company Documents or which the Agency, together with Agency's counsel, advise the Company in writing should be taken), or allow any action to be taken, which action (or omission) would in any way cause the Project not to constitute a "project" (as such quoted term is defined in the Act).

(h) The Company shall cause all notices as required by law to be given and shall comply or cause compliance with all laws, ordinances, municipal rules, and regulations and requirements of all Governmental Authorities applying to or affecting the construction, installation, equipping and operation of the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company, were the owner of the Project Facility), and the Company will defend and save the Agency and its officers, members, agents (other than the Company), and employees harmless from all fines and penalties due to failure to comply therewith.

(i) The Agency's undertaking of the Project and the provision of Financial Assistance for the Project will not have a significant impact on the environment within the meaning of SEQRA. The Company hereby covenants to comply with all mitigating measures, requirements and conditions, if any, enumerated in the SEQR Resolution under SEQRA applicable to the acquisition, construction, installation and equipping of the Project Facility and in any other approvals issued by any other Governmental Authority with respect to the Project. No material changes with respect to any aspect of the Project Facility have arisen from the date of the issuance of such negative declaration which would cause the determination contained therein to be untrue.

(j) The acquisition, construction, installation and equipping of the Project Facility will promote employment opportunities and help advance the health and improve the standard of living for the residents of the State and County.

(k) The Company has, or will have as of the first date of construction, installation and equipping, all the necessary permits, licenses, and governmental approvals and consents (collectively, the "**Approvals**") for the construction, installation and equipping of the Project Facility and has or will have such Approvals timely for each phase of, and throughout the construction, installation and equipping of the Project Facility.

(l) The Company will not sublease the whole or any portion of the Project Facility for an unlawful purpose.

(m) No part of the Project Facility will be located outside of the County.

(n) The Company shall perform, or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency (which is within the control of the Company) under and pursuant to this Agency Lease, the Company Lease and the other Company Documents and shall defend, indemnify, and hold harmless the Agency and its members, officers, agents (other than the Company), servants and employees from and against every expense, liability, or claim arising out of the failure of the Company to fulfill its obligations under the provisions of this Section 2.2.

(o) The Company agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, new employment opportunities created as a result of the Project shall be listed with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project is located. The Company further agrees that except as is otherwise provided by collective bargaining contracts or agreements applicable to the Project, it will first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs who shall be referred by administrative entities of service delivery areas created pursuant to such act or by the Community Services Division of the Department of Labor for such new employment opportunities.

(p) The Company shall provide, or cause to be provided, to the Agency any and all documentation or information requested by the Agency so that the Agency can comply with all of its reporting requirements under the Act or other applicable State law or regulation.

### **ARTICLE III CONVEYANCE OF LEASEHOLD INTEREST IN PROJECT FACILITY**

#### **SECTION 3.1 - AGREEMENT TO CONVEY LEASEHOLD INTEREST TO COMPANY.**

The Company has conveyed to the Agency, pursuant to the Company Lease, a leasehold interest in the Land and Facility, as more fully described in **Exhibit A** attached hereto, and any improvements now or hereafter constructed and installed thereon, subject to Permitted Encumbrances. Under this Agency Lease, the Agency will convey, or will cause

to be conveyed, to the Company, a sub-leasehold interest in the Project Facility, subject to Permitted Encumbrances and exclusive of the Agency's Unassigned Rights.

**SECTION 3.2 - USE OF PROJECT FACILITY.**

Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by this Agency Lease, the Company Lease and other Company Documents, provided that such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act.

**ARTICLE IV  
ACQUISITION, CONSTRUCTION, INSTALLATION  
AND EQUIPPING OF THE PROJECT**

**SECTION 4.1 - ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT FACILITY.**

(a) The Company shall promptly acquire, construct, install, equip and complete the Project Facility, all in accordance with the Plans and Specifications.

(b) The Agency hereby confirms the appointment of the Company as its true and lawful agent to perform under the following authority in compliance with the terms, purposes, and intent of this Agency Lease and the other Company Documents, and the Company hereby accepts such appointment:

(1) To construct, install, complete and equip the Project Facility and to acquire the Equipment in accordance with the terms hereof;

(2) To make, execute, acknowledge, and deliver any contracts, orders, receipts, writings, and instructions with any other Persons and, in general, to do all things which may be requisite or proper, all for the acquisition, construction, installation, equipping and completion of the Project Facility with the same powers and with the same validity as the Agency could do if acting in its own behalf, provided that the Agency shall have no liability for the payment of any sums due thereunder;

(3) To pay all fees, costs and expenses incurred in the acquisition, construction, installation, equipping and completion of the Project Facility from funds made available therefor from the funds of the Company; and

(4) To ask, demand, sue for, levy, recover, and receive all such sums of money, debts, dues, and other demands whatsoever which may be due, owing, and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with the acquisition, construction, installation, equipping and completion of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond, or other performance security.

(c) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1, provided, however, that the Agency shall have no liability for the payment of any sums due thereunder.

(d) The Company has given, or will give or cause to be given, all notices and have complied, or will comply or cause compliance with, all laws, ordinances, rules, regulations, and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules, and regulations to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility), and the Company will defend, indemnify, and save the Agency and its officers, members, agents, servants, and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

#### **SECTION 4.2 - COMPLETION OF PROJECT FACILITY.**

(a) The Company will proceed with due diligence to acquire, construct, install, equip and complete the Project Facility. Completion of the acquisition, construction, installation and equipping of the Project Facility shall be evidenced by a certificate signed by an Authorized Representative of the Company and approved by the Agency, stating:

(1) The date of such completion;

(2) That all labor, services, materials, and supplies used therefor and all costs and expenses in connection therewith have been paid;

(3) That the Company has good and valid title to all Property constituting the Project Facility subject to the interest of the Agency therein and to this Agency Lease, the Company Lease and the Bill of Sale; and

(4) That the Project Facility is ready for use and operation for its intended purposes.

(b) Notwithstanding the foregoing, such certificate may state that (1) it is given without prejudice to any rights of the Company against third parties which exist at the date of such certificate or which may subsequently come into being; (2) it is given only for the purposes of this Section 4.2; and (3) no Person other than the Agency may benefit therefrom.

(c) Such certificate shall be accompanied by (1) any and all permissions, licenses, or consents required of Governmental Authorities for the occupancy, operation, and use of the Project Facility for its intended purposes; and (2) Lien releases from the

Company's contractor and any subcontractors under a contract with a price in excess of \$100,000.

**SECTION 4.3 - COSTS OF COMPLETION PAID BY COMPANY.**

(a) The Company agrees to complete the Project and to pay in full all costs of the construction, installation, equipping and completion of the Project Facility.

(b) No payment by the Company pursuant to this Section 4.3 shall entitle the Company to any diminution or abatement of any amounts payable by the Company under this Agency Lease.

**SECTION 4.4 - REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.**

In the event of a default by any materialman or Additional Agent (as defined herein) under any contract made by them in connection with construction, installation, equipping and completion of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company against the materialman or Additional Agent so in default and against each surety for the performance of such contract. The Company may prosecute or defend any action or proceeding or take any other action involving any such materialman or Additional Agent or surety which the Company deems reasonably necessary. The Company shall advise the Agency of any actions or proceedings taken hereunder. No such suit shall relieve the Company of any of its obligations under this Agency Lease and the other Company Documents.

**ARTICLE V  
AGREEMENT TO LEASE THE PROJECT FACILITY; RENTAL PAYMENTS**

**SECTION 5.1 - AGREEMENT TO LEASE THE PROJECT FACILITY.**

In consideration of the Company's covenant herein to make rental payments, and the other covenants of the Company contained herein, including the covenant to make additional rental and other payments required hereby, the Agency hereby agrees to lease to the Company, and the Company hereby agrees to lease from the Agency, the Project Facility for and during the term provided herein and upon and subject to the terms and conditions herein set forth and subject to Permitted Encumbrances.

The Agency's acceptance of the leasehold interest in and to the Land and Facility pursuant to the Company Lease, and the holding of said interest were effected and performed solely at the request of the Company pursuant to the requirements of the Act. The Agency hereby transfers and conveys all of its beneficial and equitable interests, if any, in the Project Facility to the Company, except for its Unassigned Rights. As a result, the parties hereby acknowledge and agree that subject to the terms and conditions of this

Agency Lease, the Company has all of the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), and will have all the equitable and beneficial ownership and other interest in the Project Facility (except for the Unassigned Rights), such that the Company, and not the Agency, shall have an:

(i) unconditional obligation to bear the economic risk of depreciation and diminution in value of the Project Facility due to obsolescence or exhaustion, and shall bear the risk of loss if the Project Facility is destroyed or damaged;

(ii) unconditional obligation to keep the Project Facility in good condition and repair;

(iii) unconditional and exclusive right to the possession of the Project Facility, and shall have sole control of and responsibility for the Project Facility;

(iv) unconditional obligation to maintain insurance coverage on, and such reserves with respect to, the Project Facility as may be required by the Company and the Agency with respect to the Project;

(v) unconditional obligation to pay all taxes levied on, or payments in lieu thereof, and assessments made with respect to, the Project Facility;

(vi) subject to the Unassigned Rights, unconditional and exclusive right to receive rental and any other income and other benefits of the Project Facility and from the operation of the Project;

(vii) unconditional obligation to pay for all of the capital investment in the Project Facility;

(viii) unconditional obligation to bear all expenses and burdens of the Project Facility and to pay for all maintenance and operating costs in connection with the Project Facility; and

(ix) unconditional and exclusive right to include all income earned from the operation of the Project Facility and claim all deductions and credits generated with respect to the Project Facility on its annual federal, state and local tax returns.

## **SECTION 5.2 - TERM OF LEASE; EARLY TERMINATION; SURVIVAL.**

(a) The term of this Agency Lease shall commence on the date hereof and continue in full force and effect until the earlier of: (1) the termination of the PILOT Agreement ; or (2) the date of any termination as provided herein.

(b) The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, for the purpose of executing, delivering and recording terminations of this Agency Lease, the Company Lease, preparing a bill of sale together

with any other documents therewith and to take such other and further actions reasonably necessary to confirm the termination of the Agency's interest in the Project.

(c) The Company shall have the option, at any time during the term of this Agency Lease, to terminate this Agency Lease. In the event that the Company shall exercise its option to terminate this Agency Lease pursuant to this Section 5.2(c), the Company shall file with the Agency a certificate stating the Company's intention to do so pursuant to this Section 5.2(c) and to comply with the requirements set forth in Section 5.2(d) hereof.

(d) As a condition to the effectiveness of the Company's exercise of its right to early termination, the following payments shall be made:

(1) **To the Agency:** an amount certified by the Agency as sufficient to pay all unpaid fees and expenses of the Agency incurred under this Agency Lease, the Company Lease, the PILOT Agreement and the Project Agreement (including, but not limited to those in connection with the early termination of this Agency Lease); and

(2) **To the Appropriate Person:** an amount sufficient to pay all other fees, expenses or charges, if any, then due and payable under this Agency Lease, the Project Agreement and the other Agency Documents.

(e) The certificate required to be filed pursuant to Section 5.2(c), setting forth the provision thereof permitting early termination of this Agency Lease shall also specify the date upon which the payments pursuant to subdivision (d) of this Section 5.2 shall be made, which date shall not be less than thirty (30) nor more than sixty (60) days from the date such certificate is filed with the Agency.

(f) Contemporaneously with the termination of this Agency Lease in accordance with Sections 5.1 or 5.2 hereof, the Agency shall, to the extent required at such time in order to vest in the Company all right, title and interest in the Project Facility, transfer, and the Company shall accept, all of the Agency's right, title and interest in the Project Facility, including the Equipment, for a purchase price of One Dollar (\$1.00) plus the payment of all other sums due hereunder and all legal fees and costs associated therewith. Contemporaneously with the termination of this Agency Lease, the Company Lease and the PILOT Agreement shall terminate.

(g) The Agency shall, upon payment by the Company of the amounts pursuant hereto and to Sections 5.2(d) and (f) above and Section 5.3, deliver to the Company all documents furnished to the Agency by the Company, or prepared by the Agency at the sole expense of the Company, and reasonably necessary to evidence termination of the Company Lease, this Agency Lease and the PILOT Agreement, including, but not limited to, lease terminations and a bill of sale from the Agency with respect to its interest in the Equipment, without representation or warranty, subject to the following: (1) any Liens to which such Project Facility was subject when conveyed to the Agency, (2) any Liens created at the request of the Company or to the creation of which the Company consented or in the

creation of which the Company acquiesced, (3) any Permitted Encumbrances, and (4) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agency Lease.

(h) The obligation of the Agency under this Section 5.2 to convey the Project Facility to the Company will be subject to: (i) there being no Event of Default existing hereunder or under any payment in lieu of tax agreement or project agreement now or hereafter entered into with respect to all or any portion of the Project Facility or under any other Company Documents, or any other event which would, but for the passage of time or the giving of notice, or both, be such an Event of Default; and (ii) the Company's payment of all expenses, fees and taxes, if any, applicable to or arising from such transfer.

### **SECTION 5.3 - RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE.**

(a) The Company shall pay basic rental payments for the Project Facility consisting of: (i) to the Agency in an amount sufficient to pay the sums due under the PILOT Agreement at the times and in the manner provided for therein, and an amount sufficient to pay any and all other amounts due hereunder; and (ii) an amount sufficient to pay the sums due under the Project Agreement at the times and in the manner provided for therein.

(b) The Company shall pay to the Agency, as additional rent, within ten (10) days after the receipt of a demand therefor from the Agency, any amounts payable under the Project Agreement, any annual administrative fees of the Agency, the sum of the reasonable fees, costs and expenses of the Agency and the officers, members, agents, and employees thereof incurred by the reason of the Agency's lease of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Agency Lease, the Company Lease or any of the other Agency Documents and any other fee or expense of the Agency with respect to the Project Facility, or any of the other Agency Documents, the payment of which is not otherwise provided for under this Agency Lease, including, without limitation, reasonable fees and disbursements of Agency counsel and special counsel, including fees and expenses incurred in connection with the Agency's enforcement of any rights hereunder or incurred after the occurrence and during the continuance of an Event of Default, in connection with any waiver, consent, modification or amendment to this Agency Lease or any other Agency Document that may be requested by the Company, or, in connection with any action by the Agency at the request of or on behalf of the Company hereunder or under any other Agency Document. Any additional rent not received within ten (10) business days after demand shall accrue interest after the expiration of such ten days at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

(c) The administrative fee payable by the Company to the Agency in conjunction with this Project and the Agency's granting of Financial Assistance and all outstanding counsel fees and costs shall be paid at closing.

(d) The Company agrees to make the above-mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment,

shall be legal tender for the payment of public and private debts. In the event that the Company shall fail to make or cause to be made any of the payments required under this Agency Lease, the item or installment not so paid shall continue as an obligation of the Company until such item or installment is paid in full.

#### **SECTION 5.4 - NATURE OF OBLIGATIONS OF COMPANY HEREUNDER.**

(a) The obligations of the Company to make the payments required by this Agency Lease and to perform and observe any and all of the other covenants and agreements on its part contained herein are general obligations of the Company and are absolute and unconditional irrespective of any defense or any rights of set-off, recoupment, or counterclaim it may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue, or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Agency Lease or terminate this Agency Lease, except as provided for in Section 5.2 hereof, at any time prior to the completion for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the acquisition, construction, installation and equipping of the Project Facility, any defect in the title, design, operation, merchantability, fitness, or condition of the Project Facility, or any part thereof, or in the suitability of the Project Facility, or any part thereof, for the Company's purposes or needs, or failure of consideration for, destruction of or damage to, or Condemnation of title to, or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State, or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agency Lease or the Company Lease.

(b) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Agency Lease or the Company Lease, and in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance (subject to the provisions of Section 11.11).

### **ARTICLE VI MAINTENANCE, MODIFICATIONS, TAXES, AND INSURANCE**

#### **SECTION 6.1 - MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY.**

The Company shall:

(a) Keep the Project Facility in good condition and repair and preserve the same against waste, loss and damage, depreciation, ordinary wear and tear excepted;

(b) Make all necessary repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural, or non-structural, foreseen or unforeseen) which is damaged, destroyed, or condemned; and

(c) Operate the Project Facility in a sound and economic manner in general accordance with the project description and any Plans and Specifications previously provided to the Agency.

## **SECTION 6.2 - TAXES, ASSESSMENTS, AND UTILITY CHARGES.**

(a) The Company shall pay as the same respectively become due:

(1) Any and all taxes and governmental charges of any kind, whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility;

(2) All utility and other charges, including "service charges," incurred or imposed for the operation, maintenance, use, occupancy, upkeep, and improvement of the Project Facility, the non-payment of which would create, or entitle the obligee to impose, a Lien on the Project Facility;

(3) All assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements; and

(4) All taxes, or all payments in lieu of taxes, if applicable, required to be made to the Agency under the terms of the PILOT Agreement or any other agreement with respect thereto.

(b) Subject to the terms of the PILOT Agreement, the Company may in good faith actively contest any such taxes, assessments, and other charges, provided that: (1) the Company shall have first notified the Agency of such contest; (2) no Event of Default under this Agency Lease or any of the other Company Documents shall have occurred and be continuing; and (3) the Company shall have set aside adequate reserves for any such taxes, assessments and other charges. If the Company demonstrates to the reasonable satisfaction of the Agency and certifies to the Agency by delivery of a written certificate, that the non-payment of any such items will not endanger any part of the Project Facility or subject the Project Facility, or any part thereof, to loss or forfeiture, the Company may permit the taxes, assessments, and other charges so contested to remain unpaid during the period of such contest and any appeal therefrom. Otherwise, such taxes, assessments, or charges shall be paid promptly by the Company or secured by the Company's posting a bond in form and substance satisfactory to the Agency.

## **SECTION 6.3 - INSURANCE REQUIRED.**

During the term of this Agency Lease, the Company shall maintain or cause to be maintained insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type and as required of the Agency, paying (as the same becomes due and payable) all premiums with respect thereto, including:

(a) Insurance against loss or damage by fire, lightning, and other casualties customarily insured against (with a uniform standard extended coverage endorsement), such insurance to be in an amount not less than the full replacement value of the completed Project Facility, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company.

(b) Workers' compensation insurance, disability benefits' insurance, and such other form of insurance that the Company is required by law to provide covering loss resulting from injury, sickness, disability, or death of employees of the Company who are located at or assigned to the Project Facility;

(c) A policy of commercial general liability insurance with a limit of liability of not less than \$1,000,000 per occurrence on an "occurrence" basis and \$2,000,000 in the aggregate for bodily injury, including death, and property damage, including but not limited to, contractual liability under this Agency Lease and personal injury, with blanket excess liability coverage in an amount not less than \$2,000,000, covering the Project Facility and Equipment and the Company's and the Agency's use or occupancy thereof against all claims on account of bodily injury or death and property damage occurring upon, in or about the Project Facility or in connection with the ownership, maintenance, use and/or occupancy of the Project Facility and all appurtenant areas.

#### **SECTION 6.4 - ADDITIONAL PROVISIONS RESPECTING INSURANCE.**

All insurance required by Section 6.3 shall be with insurance companies of recognized financial standing selected by the Company and licensed to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other Persons engaged in businesses similar in size, character, and other respects to those in which the Company are engaged. All policies evidencing such insurance except the Workers' Compensation policy shall name the Company as insured and the Agency as an additional insured, as its interests may appear, and shall provide that such coverage with respect to the Agency be primary and non-contributory with any insurance secured by the Agency and require at least thirty (30) days' prior written notice to the Agency of cancellation, reduction in policy limits, or material change in coverage thereof.

Prior to the Closing Date, the Company shall deliver to the Agency, satisfactory to the Agency in form and substance: (i) policies and certificates evidencing all insurance required hereby; (ii) the additional insured endorsement(s) applicable to the Agency; (iii) the final insurance binder addressed to the Company covering the Project Facility; and (iv) evidence that the insurance so required is on a primary and non-contributory basis. In addition, the Company shall provide, if so requested by the Agency, a final and complete copy of each insurance policy within thirty (30) days of the Closing Date.

The Company shall deliver or cause to be delivered to the Agency on or before the first business day of each January thereafter each of the items set forth in the immediately

preceding paragraph, dated not earlier than the immediately preceding month, reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.3 and 6.4. The Company shall furnish to the Agency evidence that the policy has been renewed or replaced or is no longer required by this Agency Lease each year throughout the term of this Agency Lease.

All premiums with respect to the insurance required by Section 6.3 shall be paid by the Company, provided, however, that, if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is less.

#### **SECTION 6.5 - APPLICATION OF NET PROCEEDS OF INSURANCE.**

The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.3 shall be applied as follows:

(a) The Net Proceeds of the insurance required by subsection 6.3(a) shall be paid and applied as provided in Section 7.1 hereof; and

(b) The Net Proceeds of the insurance required by subsections 6.3(b) and 6.3(c) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

#### **SECTION 6.6 - PAYMENTS IN LIEU OF REAL ESTATE TAXES.**

The Company and the Agency have entered into a PILOT Agreement with respect to payments in lieu of real estate taxes for the Project Facility.

### **ARTICLE VII DAMAGE, DESTRUCTION, AND CONDEMNATION**

#### **SECTION 7.1 - DAMAGE OR DESTRUCTION.**

(a) If the Project Facility shall be damaged or destroyed, in whole or in part:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is replaced, repaired, rebuilt, or restored); and

(2) The Company shall promptly give notice thereof to the Agency; and

(3) Except as otherwise provided in subsections 7.1(b) and 7.1(c) hereof, upon receipt of the insurance proceeds, the Company shall promptly replace, repair,

rebuild, or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations, and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations, or modifications do not change the nature of the Project Facility, such that it does not constitute a "project" (as such quoted term is defined in the Act); and in the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding, or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

(b) The Company shall not be obligated to replace, repair, rebuild, or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection 7.1(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to replace, repair, rebuild, or restore the Project Facility. In such event, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) any other sums payable to the Agency pursuant to this Agency Lease and the other Agency and Company Documents, shall be applied to the repayment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement, the Project Agreement and other Agency and Company Documents. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to repay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of all such insurance settlements so that any and all amounts payable under this Agency Lease, the Company Lease, the PILOT Agreement, the Project Agreement and the other Agency Documents to the Agency shall be paid in full.

(c) If all other amounts due under this Agency Lease, the Company Lease, the PILOT Agreement, the Project Agreement and the other Agency Documents are paid in full, all such Net Proceeds, or the balance thereof, shall be paid to the Company for its purposes.

(d) The Company may adjust all claims under any policies of insurance required by subsections 6.3(a) and 6.3(c) hereof with the prior written consent of the Agency, which consent shall not be unreasonably withheld.

## **SECTION 7.2 - CONDEMNATION.**

(a) If title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation:

(1) There shall be no abatement or reduction in the amounts payable by the Company under this Agency Lease or otherwise (whether or not the Project Facility is restored); and

(2) The Company shall promptly give notice thereof to the Agency; and

(3) Except as otherwise provided in subsections 7.2(b) and 7.2(c) hereof, upon receipt of the Condemnation proceeds, the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) to substantially the condition and value as an operating entity as existed prior to such Condemnation; and the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds. (b) If title to, or the use of, less than substantially all of the Project Facility shall be taken by Condemnation, then notwithstanding anything to the contrary contained in subsection 7.2(a), the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection 7.2(a) if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. In such event, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to pay the Agency pursuant to this Agency Lease, the Company Lease, the PILOT Agreement, the Project Agreement and the other Agency Documents, shall be applied to payment of all amounts due to the Agency under this Agency Lease, the Company Lease, the PILOT Agreement, the Project Agreement and other Agency Documents. If the Net Proceeds of any Condemnation award are less than the amount necessary to pay any and all amounts payable to the Agency, the Company shall pay the difference between such amounts and the Net Proceeds of such Condemnation award so that any and all amounts payable under this Agency Lease, the Company Lease, the PILOT Agreement and other Agency Documents to the Agency shall be paid in full. If all amounts due under this Agency Lease, the Company Lease, the PILOT Agreement, the Project Agreement and the other Agency Documents have been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes. (c) The Company with the prior written consent of the Agency (which consent shall not be unreasonably withheld), shall have sole control of any Condemnation proceeding with respect to the Project Facility, or any part thereof, and may negotiate the settlement of any such proceeding.

### **SECTION 7.3 - ADDITIONS TO PROJECT FACILITY**

All replacements, repairs, rebuilding, or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Project Facility as if the same were specifically described herein.

## **ARTICLE VIII SPECIAL COVENANTS**

### **SECTION 8.1 - NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS"**

THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY, OR FITNESS OF THE PROJECT FACILITY, OR ANY PART THEREOF, OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

## **SECTION 8.2 - HOLD HARMLESS PROVISIONS.**

(a) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for, and agrees to indemnify, defend, and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims arising as a result of the Agency's undertaking the Project, including, but not limited to:

(1) Liability for loss or damage to the Project Facility or bodily injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Project Facility, or arising by reason of or in connection with the occupation or the use thereof, or the presence on, in, or about the Project Facility;

(2) Liability arising from or expense incurred by the Agency's acquisition of a leasehold interest in the Project Facility and the subleasing of the Project Facility, including, without limiting the generality of the foregoing, all liabilities or claims arising as a result of the Agency's obligations under this Agency Lease, the Company Lease or any other documents executed by the Agency at the direction of the Company in conjunction with the Project Facility;

(3) All claims arising from the exercise by the Company, and or its Additional Agents (as defined herein) of the authority conferred upon it and performance of the obligations assumed under Section 4.1 hereof;

(4) Any and all claims arising from the non-disclosure of information, if any, requested by the Company in accordance with Section 11.14 hereof;

(5) All causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities, or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees.

To the fullest extent permitted by law, the foregoing indemnities shall apply notwithstanding the fault or negligence (other than gross negligence or willful misconduct)

on the part of the Agency or any of its officers, members, agents (other than the Company), servants or employees and irrespective of any breach of statutory obligation or any rule of comparative or apportioned liability.

(b) In the event of any claim against the Agency or its members, officers, agents, (other than the Company) or employees by any employee of the Company, or any materialman or Additional Agent of the Company, or anyone directly or indirectly employed by any of them, or any one for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Company or such contractor under workers' compensation laws, disability benefit laws, or other employee benefit laws.

(c) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3, its liabilities assumed pursuant to this Section 8.2.

(d) Notwithstanding any other provisions of this Agency Lease, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Agency Lease and the Company Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution relating to the matters herein described may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents (other than the Company) or employees relating thereto.

(e) For purposes of this Section 8.2 and Section 11.11 hereof, the Company shall not be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

### **SECTION 8.3 - RIGHT OF ACCESS TO PROJECT FACILITY**

During the term of this Agency Lease, the Company agrees that the Agency and its duly authorized agents shall have the right to enter upon and to examine and inspect the Project Facility upon reasonable notice to the Company.

### **SECTION 8.4 - MAINTENANCE OF EXISTENCE.**

During the term of this Agency Lease, the Company will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

### **SECTION 8.5 - AGREEMENT TO PROVIDE INFORMATION.**

During the term of this Agency Lease, and no less frequently than annually, the Company agrees, whenever reasonably requested by the Agency or the Agency's auditor, to provide and certify, or cause to be certified, such information concerning the Project

and/or the Company, its finances, and for itself and each of its Additional Agents, information regarding exemptions from real property and mortgage recording taxes, if any, and other topics as the Agency from time to time reasonably considers necessary or appropriate including, but not limited to such other information necessary as to enable the Agency to monitor and/or make any reports required by law or governmental regulation, including but not limited to those required by Section 875 of the Act.

#### **SECTION 8.6 - BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS.**

During the term of this Agency Lease, the Company agrees to maintain proper accounts, records, and books, in which full and correct entries shall be made in accordance with generally accepted accounting principles, of all business and affairs of the Company.

#### **SECTION 8.7 - COMPLIANCE WITH ORDERS, ORDINANCES, ETC.**

(a) The Company agrees that it will, during any period in which the amounts due under this Agency Lease remain unpaid, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions, and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter affect the Company's obligations hereunder or be applicable to the Project Facility, or any part thereof, or to any use, manner of use, or condition of the Project Facility, or any part thereof, the applicability of the same to be determined both as if the Agency were the owner of the Project Facility and as if the Company were the owner of the Project Facility.

(b) Notwithstanding the provisions of subsection 8.7(a), the Company may, in good faith, actively contest the validity or the applicability of any requirement of the nature referred to in said subsection 8.7(a), provided that the Company shall have first notified the Agency of such contest, no Event of Default shall be continuing under this Agency Lease, or any of the other Company Documents; and such contest and failure to comply as such requirement shall not subject the Project Facility to loss or forfeiture. In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom unless the Agency or its members, officers, agents, or employees may be liable for prosecution for failure to comply therewith, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

#### **SECTION 8.8 - DISCHARGE OF LIENS AND ENCUMBRANCES.**

During the term of this Agency Lease, the Company hereby covenants that, except for Permitted Encumbrances, the Company agrees not to create, or suffer to be created, any Lien on the Project Facility, or any part thereof without the prior written consent of the Agency. The Company shall promptly notify the Agency of any Permitted Encumbrances created, or suffered to be created, on the Project Facility. Notwithstanding any terms herein to the contrary, any lien required by any lender of the Project Facility in conjunction with the financing or refinancing thereof, shall be permitted without the consent to the Agency.

## **SECTION 8.9 - PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS.**

Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, upon ten (10) days' prior written notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company, or the Agency and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Agency under the authority hereof, together with the interest thereon at a rate of ten percent (10%) per annum or the highest rate permitted by law, whichever is greater.

## **SECTION 8.10 - DEPRECIATION DEDUCTIONS AND TAX CREDITS.**

The parties agree that as between them, the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any portion of the Project Facility pursuant to Sections 167 and 168 of the Internal Revenue Code of 1986, as amended (the "*Code*") and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Project Facility which constitutes "Section 38 Property" and to all other State and/or federal income tax deductions and credits which may be available with respect to the Project Facility (including but not limited to the credit under Section 48 of the Code).

## **SECTION 8.11 - EMPLOYMENT OPPORTUNITIES.**

The Company shall insure that all employees and applicants for employment with regard to the Project are afforded equal employment opportunities without discrimination.

## **SECTION 8.12 - IDENTIFICATION OF THE EQUIPMENT.**

All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Agency Lease shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency.

## **ARTICLE IX ASSIGNMENTS; TRANSFERS; MERGER OF AGENCY**

### **SECTION 9.1 - ASSIGNMENT OF AGENCY LEASE.**

This Agency Lease may not be assigned by the Company, in whole or in part, nor all or any part of the Project Facility subleased, nor any part of the Project Facility sold, leased, transferred, conveyed or otherwise disposed of without the prior written consent of the Agency, which consent shall be in the Agency's sole and absolute discretion. Any assignment or sublease of this Agency Lease shall not effect a release of the Company from its obligations hereunder, under the PILOT Agreement or under the Project Agreement.

## **SECTION 9.2 - TRANSFERS OF INTERESTS.**

The Company shall not assign or otherwise transfer or allow an assignment or transfer, of a controlling interest in the Company, whether by operation of law or otherwise (including, without limitation, by way of a merger, consolidation or a change of control whereby the current existing equity holders of the Company, as of the date of the Application to the Agency, would own, in the aggregate, less than a majority of the total combined voting power of all classes of equity interest of the Company or any surviving entity), without the prior written consent of Agency, which consent shall be in the Agency's sole and absolute discretion.

## **SECTION 9.3 - MERGER OF AGENCY.**

(a) Nothing contained in this Agency Lease shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to any other body corporate and political and public instrumentality of the State, or political subdivision thereof, which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger, or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agency Lease to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) Promptly following the effective date of any such consolidation, merger, or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger, or assignment as the Company reasonably may request.

## **ARTICLE X EVENTS OF DEFAULT AND REMEDIES**

### **SECTION 10.1 - EVENTS OF DEFAULT DEFINED.**

The following shall be "Events of Default" under this Agency Lease, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agency Lease, any one or more of the following events:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to subsection 5.3; or

(b) Failure by the Company to maintain the insurance required by Section 6.3; or

(c) A default in the performance or the observance of any other of the covenants, conditions, or agreements on the part of the Company in this Agency Lease and the continuance thereof for a period of thirty (30) days after written notice is given by the

Agency or, if such covenant, condition, or agreement is capable of cure but cannot reasonably be cured within such thirty-day period, the failure of the Company to commence to cure within such thirty-day period and to prosecute the same with due diligence and cure the same within an additional thirty (30) days; or

(d) A transfer in contravention of Article 9 hereof; or

(e) The occurrence of an "Event of Default" under the Company Lease, the PILOT Agreement, the Project Agreement or any of the other Company Documents which is not timely cured as provided therein; or

(f) The Company shall generally not pay its debts as such debts become due or is unable to pay its debts as they become due; or

(g) The Company shall conceal, remove, or permit to be concealed or removed any part of its Property with intent to hinder, delay, or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance, or similar law, or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof; or

(h) By order of a court of competent jurisdiction, a trustee, receiver, or liquidator of the Project Facility, or any part thereof, or of the Company shall be appointed and such order shall not be discharged or dismissed within sixty (60) days after such appointment; or

(i) The filing by the Company of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute; the failure by the Company within sixty (60) days to lift any execution, garnishment, or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder; the commencement of a case under Title 11 of the United States Code against the Company as the debtor, or commencement under any other federal or state bankruptcy statute of a case, action, or proceeding against the Company, and continuation of such case, action, or proceeding without dismissal for a period of sixty (60) days; the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company; or in connection with any insolvency or bankruptcy case, action, or proceeding, appointment by final order, judgment, or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company unless such order, judgment, or decree is vacated, dismissed, or dissolved within sixty (60) days of its issuance; or

(j) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance.

## **SECTION 10.2 - REMEDIES ON DEFAULT.**

(a) Whenever any Event of Default shall have occurred and be continuing, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

- (1) Terminate this Agency Lease;
- (2) Terminate the Company Lease;
- (3) Terminate the PILOT Agreement;
- (4) Terminate the Company's appointment as agent of the Agency; or

(5) Take any other action at law or in equity, which may appear necessary or desirable to collect any amounts then due, or thereafter to become due, hereunder or under the Company Lease, the Project Agreement, the PILOT Agreement and to enforce the Agency's right to terminate this Agency Lease, the Company Lease and the PILOT Agreement and/or foreclose or take other action in accordance with, and pursuant to this Agency Lease.

(b) No action taken pursuant to this Section 10.2 shall relieve the Company from its obligations to make all payments required by Sections 5.3(b) and 8.2 hereof.

## **SECTION 10.3 - REMEDIES CUMULATIVE**

No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agency Lease, the Company Lease and the other Company Documents or the PILOT Agreement or now or hereafter existing at law or in equity to collect any amounts then due, or thereafter to become due, hereunder and thereunder and to enforce the Agency's right to terminate this Agency Lease, the Company Lease and the PILOT Agreement. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency to exercise any remedy reserved to it in this Article 10, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agency Lease.

## **SECTION 10.4 - AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.**

In the event the Company should Default under any of the provisions of this Agency Lease, or a dispute arises hereunder, and the Agency should employ attorneys or incur other expenses to preserve or enforce its rights hereunder or for the collection of amounts

payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees and costs of such attorneys and such other expenses so incurred.

**SECTION 10.5 - NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.**

In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE XI  
MISCELLANEOUS**

**SECTION 11.1 - NOTICES.**

All notices, certificates, and other communications hereunder shall be in writing, shall be sufficiently given, and shall be deemed given when (a) sent to the applicable address stated below by registered or certified mail, return receipt requested, and actually received by the intended recipient or by overnight courier or such other means as shall provide the sender with documentary evidence of such delivery, or (b) delivery is refused by the addressee as evidenced by the affidavit of the Person who attempted to effect such delivery. The addresses to which notices, certificates, and other communications hereunder shall be delivered are as follows:

(a) If to the Agency, to:

Jefferson County Industrial Development Agency  
800 Starbuck Avenue  
Watertown, New York 13601  
Attn: Chief Executive Officer

With copy to:

Barclay Damon LLP  
120 Washington St., Suite 500  
Watertown, New York 13601  
Attn: Joseph W. Russell, Esq.

If to the Company:

OYA GREAT LAKES SEAWAY LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408  
Attn: Tim Garcia, Senior Business Management Analyst

With Copy to:

NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408  
Attn: General Counsel

The Agency and the Company, may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, and other communications shall be sent.

**SECTION 11.2 - BINDING EFFECT.**

This Agency Lease shall inure to the benefit of and shall be binding upon the Agency and the Company and, as permitted by this Agency Lease, upon their respective heirs, successors and assigns.

**SECTION 11.3 - SEVERABILITY.**

If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall for any reason be held, or shall in fact be, inoperative, unenforceable, or contrary to law in any particular circumstance; such circumstance shall not render the provision in question inoperative or unenforceable in any other circumstance. Further, if any one or more of the sentences, clauses, paragraphs, or sections herein is contrary to law, then such covenant(s) or agreement(s) shall be deemed severable of remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Agency Lease.

**SECTION 11.4 - AMENDMENTS, CHANGES AND MODIFICATIONS.**

This Agency Lease may not be amended, changed, modified, altered, or terminated except by an instrument in writing signed by the parties hereto.

**SECTION 11.5 - EXECUTION OF COUNTERPARTS.**

This Agency Lease may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 11.6 - APPLICABLE LAW.**

This Agency Lease shall be governed exclusively by the applicable laws of the State.

**SECTION 11.7 - WAIVER OF TRIAL BY JURY.**

THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGENCY LEASE, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGENCY LEASE.

## **SECTION 11.8 - SUBORDINATION.**

This Agency Lease shall be subject and subordinate to the Company Lease and all Permitted Encumbrances in all respects.

## **SECTION 11.9 - SURVIVAL OF OBLIGATIONS.**

(a) The obligations of the Company to repay, defend and/or provide the indemnity required by Sections 8.2, and 11.11 hereof shall survive the termination of this Agency Lease and all such payments and obligations after such termination shall be made upon demand of the party to whom such payment and/or obligation is due.

(b) The obligations of the Company to repay, defend and/or provide the indemnity required by Sections 8.2, and 11.11 shall survive the termination of this Agency Lease until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action, or prosecution may be brought, and the payment in full or the satisfaction of such claim, cause of action, or prosecution, and the payment of all expenses and charges incurred by the Agency or its officers, members, agents (other than the Company) or employees relating thereto.

(c) The obligations of the Company required by Sections 2.2 and 11.14 hereof shall similarly survive the termination of this Agency Lease.

## **SECTION 11.10 - TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING.**

The Table of Contents and the Section headings in this Agency Lease have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agency Lease.

## **SECTION 11.11 - NO RECOURSE; SPECIAL OBLIGATION.**

The obligations and agreements of the Agency contained herein and in the other Agency Documents and in any other instrument or document executed in connection herewith or therewith, and any instrument or document supplemental hereto or thereto, shall be deemed the obligations and agreements of the Agency and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity; and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or 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 or of the County of Jefferson, and neither the State nor the County of Jefferson shall be liable hereon or thereon. Further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived, and to be derived from, the lease, sale, or other disposition of the Project Facility, other than revenues derived from

or constituting Unassigned Rights. No order or decree of specific performance with respect to any of the obligations of the Agency hereunder or thereunder shall be sought or enforced against the Agency unless:

(a) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and thirty (30) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than thirty (30) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(b) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(c) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request.

(d) For purposes of this Section 11.11, neither the Company nor any Additional Agent shall be deemed to constitute an employee, agent or servant of the Agency or a person under the Agency's control or supervision.

Any failure to provide notice, indemnity, or security to the Agency pursuant to this Section 11.11 shall not alter the full force and effect of any Event of Default under this Agency Lease.

#### **SECTION 11.12 - ENTIRE AGREEMENT.**

This Agency Lease and the Company Lease contain the entire agreement between the parties and all prior negotiations and agreements are merged therein.

#### **SECTION 11.14 - DISCLOSURE.**

**Section 875(7) of the New York General Municipal Law ("GML") requires that the Agency post on its website all resolutions and agreements relating to the Company's appointment as an agent of the Agency or otherwise related to the Project; and Article 6 of the New York Public Officers Law declares that all records in**

**the possession of the Agency (with certain limited exceptions) are open to public inspection and copying. If the Company feels that there are elements of the Project or information about the Company in the Agency's possession which are in the nature of trade secrets or information, the nature of which is such that if disclosed to the public or otherwise widely disseminated would cause substantial injury to the Company's competitive position, the Company must identify such elements in writing, supply same to the Agency on or before the Closing Date, and request that such elements be kept confidential in accordance with Article 6 of the Public Officers Law. Failure to do so will result in the posting by the Agency of all information in accordance with Section 875 of the GML.**

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IN WITNESS WHEREOF, the Agency and the Company have caused this Agency Lease to be executed in their respective names by their duly authorized representatives as of the day and year first written above.

**JEFFERSON COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Donald C. Alexander, CEO

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

On the 20<sup>th</sup> day of February, before me, the undersigned, a notary public in and for said state, personally appeared **Donald C. Alexander**, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public

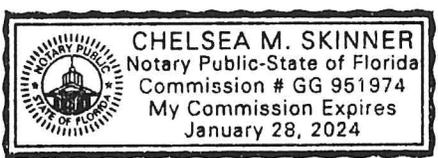
JOSEPH W. RUSSELL, 4834336  
Notary Public, State of New York  
Qualified in Jefferson County  
Commission Expires April 30 2023

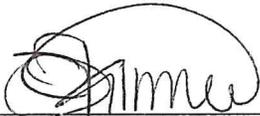
OYA GREAT LAKES SEAWAY LLC

By:   
Matthew G. Ulman, Vice President

STATE OF FLORIDA            )  
  ) ss.:  
COUNTY OF Palm Beach    )

On the 14 day of February, 2020, before me, the undersigned, a notary public in and for said state, personally appeared **Matthew G. Ulman**, 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 he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.



  
Notary Public

## EXHIBIT A

**ALL THAT PARCEL OF LAND** located in the Town of Clayton, County of Jefferson and State of New York, bounded and described as follows:

**BEGINNING** at a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12 at the west corner of the parcel of land conveyed to James Mellowship and Patty Mellowship (Instrument 2004-00008671); and runs thence, from the point of beginning, South 46 degrees 18 minutes 37 seconds East, 231.00 feet, along the southwest line of Mellowship, to an existing iron pipe at the south corner thereof, said iron pipe also being in the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west; thence South 05 degrees 33 minutes 41 seconds East, 4,224.80 feet, along the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west, to a point at its intersection with the north line of the 88 acre parcel of land conveyed to Philip J. Randazzo and Mary S. Randazzo, Trustees of the Randazzo Family Trust (Instrument 2004-00013490); thence South 86 degrees 06 minutes 23 seconds West, 123.21 feet, along the north line of said 88 acre Randazzo Family Trust parcel, to a 5/8 inch rebar with red plastic cap set at the southeast corner of the parcel of land conveyed to Beth Kolakowski, et al. (Instrument 2004-00015485), said rebar with cap set being South 26 degrees 36 minutes 42 seconds East, 1,613.18 feet from an existing iron pipe at the southeast corner of the parcel of land conveyed to Matthew D. Bassett and Donna E. Bassett (Instrument 2007-00019567); thence North 26 degrees 36 minutes 42 seconds West, 3,251.27 feet, along the northeast line of Kolakowski, et al., passing through the last described iron pipe, to and along the northeast line of Bassett, generally along wire fence ruins in part, to a 5/8 inch rebar with red plastic cap set at the southwest corner of the parcel of land conveyed to Niagara Mohawk Power Corporation (Liber 694, Page 378), said rebar with cap set being South 78 degrees 05 minutes 18 seconds West, 3.37 feet, from an existing iron pipe; thence North 78 degrees 05 minutes 18 seconds East, 241.06 feet, along the south line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set at the southeast corner thereof; thence North 11 degrees 54 minutes 42 seconds West, 957.19 feet, along the east line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12; thence North 78 degrees 16 minutes 07 seconds East, 219.42 feet, along the southeast highway boundary of New York State Route 12, to a point; thence generally northeasterly continuing along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,394.00 feet, an arc distance of 339.99 feet, to a concrete highway monument, said monument being North 71 degrees 02 minutes 36 seconds East, 339.15 feet from the last described point; thence North 73 degrees 12 minutes 09 seconds East, 147.86 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence North 31 degrees 25 minutes 42 seconds East, 71.18 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence generally northeasterly along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,398.33 feet, an arc distance of 334.95 feet to the point of beginning, said point of beginning being

North 48 degrees 29 minutes 58 seconds East, 334.15 feet from the last described concrete monument, containing 77.87 acres of land, more or less.

The above described parcel being part of the lands conveyed from Bruce Shaw to Leland Bruce Shaw a/k/a Bruce Shaw as Trustee of the Leland Bruce Shaw a/k/a Bruce Shaw Irrevocable Trust Agreement by deed dated April 16, 2013 and recorded in the Jefferson County Clerk's Office on April 25, 2013 as Instrument 2013-00005835.

Subject to a Sewer Easement granted by Leland Bruce Shaw, a/k/a Bruce Shaw as Trustee of the Leland Bruce Shaw, a/k/a Bruce Shaw Irrevocable Trust Agreement to the Town of Clayton by deed dated January 23, 2014 and recorded in the Jefferson County Clerk's Office on February 20, 2014 as Instrument 2014-00001837.

Subject to an Easement, 100 feet in width, granted by Bruce Shaw to Niagara Mohawk Power Corporation by deed dated June 08, 1960 and recorded in the Jefferson County Clerk's Office on June 24, 1960 in Liber 694 of Deeds, at Page 380.

Subject to the rights of the public in and to that portion of Blanchard Road contained within the above described premises as it is used for highway purposes.

Together with and subject to rights, covenants, easements, rights of way and restrictions of record.

**EXHIBIT B**

**NOT USED**

## EXHIBIT C

### TABLE OF DEFINITIONS

The following terms shall have the meanings set forth below, unless the context or use clearly indicate another or different meaning and the singular form of such defined words and terms shall include the plural and vice versa:

**Act:** means the New York State Industrial Development Agency Act (N.Y. Gen. Municipal Law §§ 850 et seq.) as amended, together with Section 926 of the N.Y. General Municipal Law, as amended from time to time.

**Additional Agents:** means a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents appointed by the Company in furtherance of the completion of the Project in accordance with the terms of this Agency Lease.

**Agency:** means the Jefferson County Industrial Development Agency and its successors and assigns.

**Agency Documents:** means this Agency Lease, the Company Lease, the Project Agreement, the PILOT Agreement and any other documents executed by the Agency in connection with the Project or the Financial Assistance granted in connection therewith.

**Agency Lease:** means this Agency Lease Agreement dated as of February 1, 2020, by and between the Agency and the Company, as the same may be amended or supplemented from time to time.

**Application:** means the application submitted by the Company to the Agency dated February 25, 2019, requesting the Agency undertake the Project, as same may be amended or supplemented from time to time.

**Authorized Representative:** means for the Agency, the Chairperson, Vice Chairperson or the Executive Director of the Agency; for the Company, its Member or any officer designated in a certificate signed by an Authorized Representative of such Company and, for either the Agency or the Company, any additional persons designated to act on behalf of the Agency or the Company by written certificate furnished by the designating party containing the specimen signature of each designated person.

**Closing Date:** means February 1, 2020.

**Closing Memorandum:** means the closing memorandum of the Agency relating to the Project.

**Company:** means OYA GREAT LAKES SEAWAY LLC, a limited liability company organized and existing under the laws of the State of Delaware having an address at 251 Little Falls Drive, Wilmington, Delaware, 19808, and its permitted successors and assigns.

**Company Documents:** means the Company Lease, this Agency Lease, the Project Agreement, the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and any other documents executed by the Company in connection with the Project or the Financial Assistance granted in connection therewith.

**Company Lease:** means the Company Lease Agreement dated as of February 1, 2020, from the Company to the Agency, pursuant to which the Company leased the Project Facility to the Agency, as the same may be amended or supplemented from time to time.

**Condemnation:** means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

**County:** means the County of Jefferson in the State of New York.

**Environmental Compliance and Indemnification Agreement:** means the Environmental Compliance and Indemnification Agreement dated as of February 1, 2020, by the Company to the Agency.

**Event of Default:** means an "event of default" or "default" under Section 10.01 of the Agency Lease or a default under Section 2.8 of the PILOT Agreement or applicable sections of the Company Lease, the Project Agreement or the Environmental Compliance Agreement.

**Facility:** shall have the meaning ascribed thereto in the fifth **WHEREAS** clause of this Agency Lease and includes the improvements located or to be constructed on the Land.

**Financial Assistance:** shall have the meaning ascribed thereto in the fifth **WHEREAS** clause of this Agency Lease and as defined in Section 854(14) of the Act.

**Governmental Authority:** means any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign.

**Land:** means a portion of the improved real property located at 15227 Blanchard Road, Town of Orleans, Jefferson County, New York, more particularly described on **Exhibit A** attached to this Agency Lease.

**Lien:** means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including, but not limited to, a security interest arising from a mortgage, encumbrance, pledge, conditional sale, or trust receipt or a lease, consignment or bailment for security purposes.

The term "Lien" includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases, and other similar title exceptions and encumbrances, including, but not limited to mechanics, materialmen, warehousemen, and carriers liens and other similar encumbrances effecting real property. For purposes hereof, a Person shall be deemed to be the owner of any property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the property has been retained by or vested in some other person for security purposes.

**Net Proceeds:** means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

**Permitted Encumbrances:** means (A) utility, access and other easements and rights of way, and restrictions, encroachments and exceptions, that benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) artisans', mechanics', materialmen's, warehousemen's, carriers', landlords', bankers', workmen's compensation, unemployment compensation and social security, and other similar Liens to the extent permitted by this Agency Lease, (C) Liens for taxes (1) to the extent permitted by this Agency Lease or (2) at the time not delinquent, (D) any Lien on the Project Facility obtained through any Agency Document or Company Document, (E) Liens of judgments or awards in respect of which an appeal or proceeding for review shall be pending (or is pending within ten days after entry) and a stay of execution shall have been obtained (or is obtained within ten days after entry), or in connection with any claim or proceeding, (F) Liens on any Property hereafter acquired by the Company or any subsidiary which liens are created contemporaneously with such acquisition to secure or provide for the payment or financing of any part of the purchase price thereof, (G) Liens consisting solely of restrictions under any applicable laws or any negative covenants in any applicable agreements (but only to the extent that such restrictions and covenants do not prohibit the execution, delivery and performance by the Company of this Agency Lease, and (H) existing mortgages or encumbrances on the Project Facility as of the Closing Date or thereafter incurred with the consent of the applicable mortgagee and the Agency.

**Person:** means an individual, partnership, corporation, limited liability company, trust, or unincorporated organization, and any government or agency or political subdivision or branch thereof.

**PILOT Agreement:** means the Payment in Lieu of Taxes Agreement dated as of between the Agency and the Company, as amended or supplemented from time to time.

**Plans and Specifications:** means the representations, plans and specifications, if any, and presented by the Company to the Agency in its Application and any presentation relating to the construction, installation and equipping of the Project Facility.

**Project:** shall have the meaning ascribed thereto in the fifth **WHEREAS** clause of this Agency Lease.

**Project Agreement:** means the Project Agreement dated as of February 1, 2020, between the Company and the Agency setting forth rights and obligations of the parties with respect to the Financial Assistance.

**Project Facility:** means the Land, the Facility and the Equipment.

**Property:** means any interest of the Company in any kind of property or asset, whether real, personal, or mixed, or tangible or intangible.

**Resolution** means the Agency's resolution adopted on January 9, 2020, authorizing the undertaking of the Project and the execution and delivery of certain documents by the Agency in connection therewith.

**SEQRA:** means the State Environmental Quality Review Act constituting Article 8 of the State Environmental Conservation Law and the regulations promulgated thereunder, as amended.

**SEQR Resolution:** means the Agency's resolution adopted on October 3, 2019, in which the Agency determined the Project is a "Type 1 Action" which will not have a significant effect on the environment and, therefore, than an environmental impact statement is not required to be prepared with respect to the Project.

**State:** means the State of New York.

**Unassigned Rights:** means:

(i) the right of the Agency in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies, binders or certificates, or other notices or communications, if any, required to be delivered to the Agency under this Agency Lease;

(ii) the right of the Agency to grant or withhold any consents or approvals required of the Agency under this Agency Lease;

(iii) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Project Facility shall always constitute a qualified "project" as defined in and as contemplated by the Act;

(iv) the right of the Agency to require and enforce any right of defense and any indemnity from any Person;

(v) the right of the Agency in its own behalf (or on behalf of the appropriate taxing authorities) to enforce, receive amounts payable under or otherwise exercise its rights under Sections 2.2(f), 2.2(h), 2.2(n), 2.2(q), 4.1(d), 4.4,

5.3, 5.4, 6.2, 6.3, 6.4, 8.2, 8.3, 8.5, 8.7, 8.9, 10.2, 10.4, 11.9, 11.11 and 11.12 of this Agency Lease and Sections 2.6(g), 4.8 and 4.9 of the Company Lease; and

(vi) the right of the Agency in its own behalf to declare an Event of Default and enforce its remedies under Article X of this Agency Lease or with respect to any of the Agency's Unassigned Rights.

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**JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**OYA GREAT LAKES SEAWAY LLC**

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**MEMORANDUM OF AGENCY LEASE AGREEMENT**

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**DATED AS OF  
FEBRUARY 1, 2020**

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**RELATING TO THE PREMISES LOCATED AT  
15246 BLANCHARD ROAD, TOWN OF CLAYTON,  
JEFFERSON COUNTY, NEW YORK.**

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**THIS DOCUMENT IS INTENDED TO CONSTITUTE A  
MEMORANDUM OF AGENCY LEASE AGREEMENT OF REAL  
ESTATE, AND IS INTENDED TO BE RECORDED IN LIEU OF  
SUCH LEASE, IN ACCORDANCE WITH THE PROVISIONS OF  
SECTION 294 OF THE NEW YORK REAL PROPERTY LAW.**

## MEMORANDUM OF AGENCY LEASE AGREEMENT

The undersigned, **JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation organized and existing under the laws of the State of New York (the "**State**") having an office for the transaction of business located at 800 Starbuck Ave, Watertown, New York (the "**Agency**"), and **OYA GREAT LAKES SEAWAY LLC**, a limited liability company organized and existing under the laws of the Delaware, having an office for the transaction of business located at 251 Little Falls Drive, Wilmington, Delaware 19808 (the "**Company**"), have entered into a certain lease agreement dated as of February 1, 2020, (the "**Lease Agreement**").

The Lease Agreement covers a leasehold interest affecting the premises (the "**Land**") described on Exhibit "A" attached hereto and made a part hereof, together with the improvements to the Land (the "**Facility**") (the Land and the Facility being collectively referred to in the Lease Agreement as the "**Project Facility**").

The Lease Agreement provides for the lease (with an obligation to purchase) of the Project Facility by the Agency to the Company for a term commencing on the date of execution and delivery of the Lease Agreement and terminating on the earlier to occur of (A) termination of PILOT Agreement, or (B) the date that the Lease Agreement shall be terminated pursuant to Article X thereof (entitled "Events of Default and Remedies") or Article XI thereof (entitled "Options and Obligation to Purchase").

The Lease Agreement obligates the Company (A) to pay, on the date of execution and delivery of the Lease Agreement, a single lump sum basic rental payment equal to the Agency's administrative fee for the project which is the subject of the Lease Agreement, (B) throughout the term of the Lease Agreement, to provide indemnity to the Agency, (C) to make payments in lieu of taxes with respect to the Addition Parcel and the Additions, and (D) to make certain other payments to the Agency.

Subject to the provisions of the Lease Agreement, the Lease Agreement (A) obligates the Company to purchase the Project Facility at the end of the lease term, or under certain circumstances upon the sooner termination of the Lease Agreement, and (B) grants to the Company the option, at any time the Company so elects, to purchase the Project Facility, in each case for a purchase price equal to the sum of One Dollar (\$1.00) plus certain other amounts payable to the Agency pursuant to the Lease Agreement.

The Company, as tenant, is entitled to possession of the Project Facility from the date hereof. The Company, as tenant, has the right to enter into leases affecting all or a portion of the Project Facility as landlord, subject to the conditions set forth in the Lease Agreement.

The Lease Agreement is available for inspection during normal business hours at the office of the Agency, currently located as indicated above.

IN WITNESS WHEREOF, the Agency and the Company have caused this Memorandum of Agency Lease Agreement to be executed in their respective names by their duly authorized officers and to be dated as of the day and year first above written.

**JEFFERSON COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

By:   
Donald C. Alexander, CEO

**OYA GREAT LAKES SEAWAY LLC**

By:   
Matthew G. Ulman, Vice President

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

On the 20<sup>th</sup> day of February, 2020 before me, the undersigned, a notary public in and for said State, personally appeared **Donald C. Alexander**, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the Instrument.

  
Notary Public  
JOSEPH W. RUSSELL, 4834336  
Notary Public, State of New York  
Qualified in Jefferson County  
Commission Expires April 30, 2023

STATE OF FLORIDA )  
COUNTY OF Palm Beach ) ss.:

On the 1<sup>st</sup> day of February, 2020, before me, the undersigned, a notary public in and for said State, personally appeared **Matthew G. Ulman**, 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 he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the Instrument.

  
CHELSEA M. SKINNER  
Notary Public-State of Florida  
Commission # GG 951974  
My Commission Expires  
January 28, 2024

  
Notary Public

## EXHIBIT "A"

**ALL THAT PARCEL OF LAND** located in the Town of Clayton, County of Jefferson and State of New York, bounded and described as follows:

**BEGINNING** at a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12 at the west corner of the parcel of land conveyed to James Mellowship and Patty Mellowship (Instrument 2004-00008671); and runs thence, from the point of beginning, South 46 degrees 18 minutes 37 seconds. East, 231.00 feet, along the southwest line of Mellowship, to an existing iron pipe at the south corner thereof, said iron pipe also being in the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west; thence South 05 degrees 33 minutes 41 seconds East, 4,224.80 feet, along the municipal division line between the Town of Orleans on the east and the Town of Clayton on the west, to a point at its intersection with the north line of the 88 acre parcel of land conveyed to Philip J. Randazzo and Mary S. Randazzo, Trustees of the Randazzo Family Trust (Instrument 2004-00013490); thence South 86 degrees 06 minutes 23 seconds West, 123.21 feet, along the north line of said 88 acre Randazzo Family Trust parcel, to a 5/8 inch rebar with red plastic cap set at the southeast corner of the parcel of land conveyed to Beth Kolakowski, et al. (Instrument 2004-00015485), said rebar with cap set being South 26 degrees 36 minutes 42 seconds East, 1,613.18 feet from an existing iron pipe at the southeast corner of the parcel of land conveyed to Matthew D. Bassett and Donna E. Bassett (Instrument 2007-00019567); thence North 26 degrees 36 minutes 42 seconds West, 3,251.27 feet, along the northeast line of Kolakowski, et al., passing through the last described iron pipe, to and along the northeast line of Bassett, generally along wire fence ruins in part, to a 5/8 inch rebar with red plastic cap set at the southwest corner of the parcel of land conveyed to Niagara Mohawk Power Corporation (Liber 694, Page 378), said rebar with cap set being South 78 degrees 05 minutes 18 seconds West, 3.37 feet, from an existing iron pipe; thence North 78 degrees 05 minutes 18 seconds East, 241.06 feet, along the south line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set at the southeast corner thereof; thence North 11 degrees 54 minutes 42 seconds West, 957.19 feet, along the east line of Niagara Mohawk Power Corporation, to a 5/8 inch rebar with red plastic cap set in the southeast highway boundary of New York State Route 12; thence North 78 degrees 16 minutes 07 seconds East, 219.42 feet, along the southeast highway boundary of New York State Route 12, to a point; thence generally northeasterly continuing along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,394.00 feet, an arc distance of 339.99 feet, to a concrete highway monument, said monument being North 71 degrees 02 minutes 36 seconds East, 339.15 feet from the last described point; thence North 73 degrees 12 minutes 09 seconds East, 147.86 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence North 31 degrees 25 minutes 42 seconds East, 71.18 feet, continuing along the southeast highway boundary of New York State Route 12, to a concrete highway monument; thence generally northeasterly along the southeast highway boundary of New York State Route 12, along a curve to the left having a radius of 1,398.33 feet, an arc distance of 334.95 feet to the point of beginning, said point of beginning being

North 48 degrees 29 minutes 58 seconds East, 334.15 feet from the last described concrete monument, containing 77.87 acres of land, more or less.

The above described parcel being part of the lands conveyed from Bruce Shaw to Leland Bruce Shaw a/k/a Bruce Shaw as Trustee of the Leland Bruce Shaw a/k/a Bruce Shaw Irrevocable Trust Agreement by deed dated April 16, 2013 and recorded in the Jefferson County Clerk's Office on April 25, 2013 as Instrument 2013-00005835.

Subject to a Sewer Easement granted by Leland Bruce Shaw, a/k/a Bruce Shaw as Trustee of the Leland Bruce Shaw, a/k/a Bruce Shaw Irrevocable Trust Agreement to the Town of Clayton by deed dated January 23, 2014 and recorded in the Jefferson County Clerk's Office on February 20, 2014 as Instrument 2014-00001837.

Subject to an Easement, 100 feet in width, granted by Bruce Shaw to Niagara Mohawk Power Corporation by deed dated June 08, 1960 and recorded in the Jefferson County Clerk's Office on June 24, 1960 in Liber 694 of Deeds, at Page 380.

Subject to the rights of the public in and to that portion of Blanchard Road contained within the above described premises as it is used for highway purposes.

Together with and subject to rights, covenants, easements, rights of way and restrictions of record.