



Cortland County

Industrial Development Agency

Board of Directors Meeting

December 13, 2021 – Noon

40-42 Main Street, Suite A, 2nd Floor Cortland New York, 13405

Per Part E of Chapter 417 of the Laws of the State of New York for 2021 which amends Article 7 of the Public Officers Law, videoconferencing will be used to conduct this meeting. Anyone wishing to access this meeting remotely may do so using the following link via the Zoom video conferencing platform.

Join Zoom Meeting

<https://us02web.zoom.us/j/81939671337?pwd=NlFsQVhHcStIcjd3OFNmcUlDdC8zQT09>

Meeting ID: 819 3967 1337

Passcode: 489397

Dial by your location

+1 646 558 8656 US (New York)



Cortland County

Industrial Development Agency

Roll Call

Mike McMahon	Chairman	
Stephen Compagni	Vice Chairman	
John O. Reagan	Treasurer	
Clint Brooks	Secretary	
Johanna Ames	Board Member	
Dr. Kathleen Burke	Board Member	
Donald Richards	Board Member	

Approval of Minutes

September 13th, 2021

New Business

- 1.) Authorize assignment of DG New York CS, LLC & LaPeer-Cortland LLC lease agreements to DG Empire Shine, LLC
- 2.) Review 2021 PILOT Employment Affidavits
- 3.) Adopt 2022 IDA Policies
- 4.) Nominate/Elect Officers
- 5.) Appoint Committees (Audit, Finance, Governance, Personnel)
- 6.) Authorize Signatories

Reports

- 1.) Finance Report
- 2.) Director's Report

Executive Session

Pursuant to Article 7 of the New York State Public Officers Law, Section 105(1)(h) To discuss the proposed acquisition, sale, or lease of real property.

Adjourn



Cortland County
Industrial Development Agency

Minutes



Cortland County

Industrial Development Agency

Minutes of September 13, 2021

Mr. Brooks opened the regular meeting of Cortland County Industrial Development Agency in public session on Monday, September 13, 2021, at 12:00 o'clock p.m., The meeting was conducted both in person and remotely via the online web-based Zoom video and audio conference platform in accordance with Executive Order No. 202.1 issued by the Governor of the State of New York on March 12, 2020, as thereafter extended.

Roll Call

Mike McMahon	Chairman	Excused
Stephen Compagni	Vice Chairman	Remote
John O. Reagan	Treasurer	Present
Clint Brooks	Secretary	Present
Johanna Ames	Board Member	Remote
Dr. Kathleen Burke	Board Member	Remote
Donald Richards	Board Member	Remote
Garry VanGorder	Executive Director	Present
John Sidd	Counsel to the IDA	Present
Eric Mulvihill	Economic Development Specialist	Present

Approval of Minutes

Mr. Reagan made a motion to approve the minutes of June 7th, 2021; Ms. Ames seconded. All in favor, none opposed. The minutes were adopted as presented.

New Business

1.)Review/Authorize proposed 2022 IDA Budget – The Board reviewed the proposed budget. Mr. Reagan discussed the purchase of the building at 40 Main Street₄ And questioned if the proposed



Cortland County

Industrial Development Agency

spending plan should include funds for property purchase. The Board had a robust conversation about the issue and Mr. Sidd agreed to look at options to secure an interest in the property. Mr. Reagan asked for monthly progress reports on the topic.

Mr. VanGorder said the most significant change in the proposed budget is in the operating agreement between the IDA and the BDC. The budget calls for a \$25,000 increase in operating funds from the IDA to the BDC, the proposed increase is driven by rising costs associated with BDC operations.

Mr. Richards made a motion to adopt the 2022 Tentative IDA budget as presented, Ms. Ames seconded the motion; all voting in favor, none opposed.

Mr. Reagan made a motion to amend the BDC staff servicing agreement between the Cortland County IDA and the Cortland County BDC, Ms. Burke seconded the amendment; all voting in favor, none opposed.

Reports

1.) Finance Report – Mr. VanGorder reviewed the monthly financial reports, he said there are no substantive issues to report. He indicated that the agency is still awaiting the closing of the Locust Ave. solar project.

2.) Director's Report – Mr. VanGorder reviewed the status of the Homer Solar project. Mr. VanGorder discussed the conveyance of the Agricultural protection easement on the Knapp Farm in Preble to the New York State Agricultural Land Trust. This transfer will allow for the dissolution of the Cortland County Agricultural Corporation, which will satisfy a concern raised by the New York State Budget Authorities Office regarding limited liability corporations with minimal development activity.

Mr. VanGorder updated the Board on the progress at the Gutchess Lumber Sports Park.

Mr. VanGorder discussed the ongoing demolitions of the former Cooper Tools/Apex manufacturing facility on the East end of Cortland. He is in



Cortland County

Industrial Development Agency

discussions with the current property owner regarding future uses and redevelopment.

Adjourn – Mr. Reagan made a motion to adjourn the meeting, Mr. Brooks seconded the motion; all voting in favor none opposed. The meeting adjourned at 12:29 PM.



Cortland County
Industrial Development Agency

New Business

DG New York CS, LLC
700 Universe Blvd.
Juno Beach, Florida 33408

November 22, 2021

Via UPS

Cortland County Industrial Development Agency
40 Main Street, Suite A
Cortland, NY 13045
Attn: Executive Director

With a copy to:

Hancock Estabrook, LLP
1800 AXA Tower I
Syracuse, NY 13202
Attn: John P. Sidd, Esq

Re: UNIFORM PROJECT & LEASE AGREEMENT by and between CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“**Agency**” or “**you**”) and DG New York CS, LLC limited liability company (“**Company**” or “**we**”), dated as of February 1, 2021 (the “**Lease Agreement**”); Lease to Agency between the Agency and the Company dated February 1, 2021 (the “**Lease to Agency**” and, together with the Lease Agreement and other Basic Documents, the “**Agreements**”).

Ladies and Gentlemen:

Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreements.

The indirect parent (“**Sponsor**”) of the Company is in the process of financing a portfolio of distributed generation projects (the “**Financing**”) which includes the Project. In order to consummate the Financing in an efficient manner, Sponsor is undertaking an internal restructuring of the project companies involved in the Financing (the “**Restructuring**”). As part of the Restructuring, Company will assign the Agreements to DG Empire Shine, LLC (the “**Assignee**”), a Related Person of the Company and wholly-owned indirect subsidiary of Sponsor (the “**Assignment**”). As a result of the Assignment all rights, privileges and power of, and all debts, liabilities and duties of the Company under the Agreements will be assumed by the Assignee. Accordingly, from and after the Assignment, the “**Company**” under the Agreements shall mean and refer to the Assignee.

In addition, the parties providing the Financing will require that the Assignee collaterally assign the Agreements as security for the Financing (the “**Collateral Assignment**”).

In accordance with Section 9.1 of the Lease Agreement and Section 3.6 of the Lease to Agency, we hereby respectfully request that you consent to the Collateral Assignment by executing the Consent to Collateral Assignment in substantially the form attached hereto as Exhibit A, modified to include KeyBank National

Association as a third-party beneficiary rather than a signatory to the Consent. We also request that this matter be placed on the agenda for the Agency's next Board meeting on December 13, 2021.

Please do not hesitate to contact Mithun Vyas at 561-694-3842 or via email at Mithun.Vyas@nexterenergy.com if you should have any questions or comments regarding this request.

Sincerely,

DG New York CS, LLC



By: _____

Name: Matthew G. Ulman

Title: Vice President

EXHIBIT A

CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY CONSENT TO COLLATERAL ASSIGNMENT

This **CONSENT TO COLLATERAL ASSIGNMENT** (this "Consent"), dated as of the ____ day of December, 2021 is entered into by and among the **CORTLAND 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 at 40 Main Street, Suite A, Cortland, New York (the "Agency") and **DG EMPIRE SHINE, LLC**, a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business at 700 Universe Boulevard, Juno Beach, Florida 33408 (the "Company").

RECITALS

WHEREAS, DG New York CS, LLC, a Related Person of the Company ("Assignor") entered into a certain straight-lease transaction with the Agency dated as of February 1, 2021 in relation to a Project consisting of the following: (A) (1) the acquisition of a leasehold interest in an approximately 31.27 acre parcel of land (the "Land") located on East River Road in the town of Cortlandville, Cortland County, New York, (2) the installation of a solar photovoltaic facility on the Land with an approximate 5 megawatt capacity (the "Facility"), and (3) the acquisition and installation therein and thereon of certain fixtures and equipment (the "Equipment"), all of the foregoing to constitute a solar photovoltaic facility to be operated by the Company (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency and the Assignor executed certain documents with respect to the Project all dated as of February 1, 2021 including an Underlying Lease Agreement, Uniform Project & Lease Agreement, Payment In Lieu of Tax Agreement and other related straight-lease transaction documents (collectively the "Straight-Lease Documents");

WHEREAS, Assignor has assigned the Project Facility and Straight-Lease Documents to Company; and

WHEREAS, pursuant to a Credit Agreement and related financing documents to be executed by the Company, certain of the Company's affiliates, and the Lenders party thereto, including **KEYBANK NATIONAL ASSOCIATION**, acting as collateral agent for the Secured Parties party thereto (the "Collateral Agent"), the Lenders are making a loan (the "Loan") to the Company to finance a portfolio of solar photovoltaic facilities including

the Project Facility, and the Company desires to collaterally assign certain of its rights and obligations under the Straight-Lease Documents to the Collateral Agent for the benefit of the Secured Parties as security for the Loan.

NOW THEREFORE, in consideration of the foregoing recitals, the agreements, promises and covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Consent hereby agree as follows:

1. **Consent to Pledge.** The Agency hereby acknowledges and consents to the pledge by the Company to the Collateral Agent of the Straight-Lease Documents (excepting therefrom the Agency's Unassigned Rights (as defined in the Uniform Project & Lease Agreement) as security and collateral for the obligations of the Company to the Collateral Agent for the benefit of the Secured Parties pursuant to the terms and conditions of the documents evidencing, securing or otherwise executed in connection with the Loan (collectively, the "**Loan Documents**"). Nothing contained herein shall be construed to constitute a consent by the Agency to further assignment of the Straight-Lease Documents by the Collateral Agent without Collateral Agent first obtaining the written approval from the Agency.

2. **Attornment.** In the event that Collateral Agent exercises its remedies under the Loan Documents, the Agency agrees that (a) the Straight-Lease Documents shall remain in full force and effect, (b) it will make full and complete attornment with respect to the Straight-Lease Documents (without the necessity of any other or further attornment or instrument) to Collateral Agent (and any such exercise of remedies shall not trigger a recapture of the Financial Assistance) and (c) Collateral Agent shall be entitled to all of the rights of the Company under the Straight-Lease Documents including, without limitation, the Financial Assistance. Notwithstanding anything contained herein to the contrary, Company shall provide the Agency with reasonable notice prior to the exercise of Collateral Agent's remedies under the Loan Documents.

3. **Collateral Agent's Right to Cure Company Default.** If any breach or default on the part of the Company occurs under the Straight-Lease Documents and the Company fails to cure the same within any applicable cure or grace period (any such uncured breach or default being referred to herein as a "**Company Default**"), Collateral Agent shall have the right, but not the obligation, to cure or cause the cure of such Company Default on the same terms and under the same conditions as the Company under the Straight-Lease Documents.

4. **Miscellaneous.**

4.1 **Notices.** Any notices required or permitted to be given with this Consent shall be in writing and shall be deemed to have been given if and when received if personally delivered, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth in the documents and any notice to Collateral Agent shall be addressed as follows:

If to Collateral Agent:

KeyBank National Association,
127 Public Square
Cleveland, OH 44114-1306
Tel: (216) 689-7669

If to Agency:

Cortland County Industrial Development Agency
40 Main Street, Suite A
Cortland, New York 13045

If to Company:

DG Empire Shine, LLC
700 Universe Boulevard
Juno Beach, Florida 33408

or to such other address the party to receive such notice may have theretofore furnished to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Collateral Agent herein is required to be given.

4.2 Third Party Beneficiary. The Parties agree that the Collateral Agent shall be a third-party beneficiary to this Agreement and is entitled to the rights and benefits accruing to the Collateral Agent hereunder and may enforce the provisions hereof as if it were a direct party hereto.

4.3 Counterparts. This Consent may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent.

4.4 Governing Law. This Consent and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of New York.

4.5 Successors and Assigns. This Consent, and the terms, covenants and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto and each of their successors and assigns.

4.6 General. This Consent may not be modified or amended except by written agreement of each of the parties hereto. The headings contained herein have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Consent, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Consent, or the application of such term,

covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Consent shall be valid and enforceable to the fullest extent permitted by law. This Consent represents the entire agreement between the parties and all prior negotiations and communications between the parties concerning the subject loan are superseded hereby.

SIGNATURE PAGES FOLLOW

SIGNATURE PAGE TO CONSENT TO COLLATERAL ASSIGNMENT

COMPANY:
DG EMPIRE SHINE, LLC

By:


Name: Matthew G. Ulman
Title: Vice President

SIGNATURE PAGE TO CONSENT TO COLLATERAL ASSIGNMENT

AGENCY:

**CORTLAND COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Garry VanGorder

Name: Garry VanGorder

Title: Executive Director

DG New York CS, LLC
700 Universe Blvd.
Juno Beach, Florida 33408

November 22, 2021

Via UPS

Cortland County Industrial Development Agency
40 Main Street, Suite A
Cortland, NY 13045
Attn: Executive Director

With a copy to:

Hancock Estabrook, LLP
1800 AXA Tower I
Syracuse, NY 13202
Attn: John P. Sidd, Esq

Re: UNIFORM PROJECT & LEASE AGREEMENT by and between CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“**Agency**” or “**you**”) and DG New York CS, LLC limited liability company (“**Company**” or “**we**”), dated as of February 1, 2021 (the “**Lease Agreement**”); Lease to Agency between the Agency and the Company dated February 1, 2021 (the “**Lease to Agency**” and, together with the Lease Agreement and other Basic Documents, the “**Agreements**”).

Ladies and Gentlemen:

Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreements.

The indirect parent (“**Sponsor**”) of the Company is in the process of financing a portfolio of distributed generation projects (the “**Financing**”) which includes the Project. In order to consummate the Financing in an efficient manner, Sponsor is undertaking an internal restructuring of the project companies involved in the Financing (the “**Restructuring**”). As part of the Restructuring, Company will assign the Agreements to DG Empire Shine, LLC (the “**Assignee**”), a Related Person of the Company and wholly-owned indirect subsidiary of Sponsor (the “**Assignment**”). As a result of the Assignment all rights, privileges and power of, and all debts, liabilities and duties of the Company under the Agreements will be assumed by the Assignee. Accordingly, from and after the Assignment, the “**Company**” under the Agreements shall mean and refer to the Assignee.

In addition, the parties providing the Financing will require that the Assignee collaterally assign the Agreements as security for the Financing (the “**Collateral Assignment**”).

In accordance with Section 9.1 of the Lease Agreement and Section 3.6 of the Lease to Agency, we hereby respectfully request that you consent to the Collateral Assignment by executing the Consent to Collateral Assignment in substantially the form attached hereto as Exhibit A, modified to include KeyBank National

Association as a third-party beneficiary rather than a signatory to the Consent. We also request that this matter be placed on the agenda for the Agency's next Board meeting on December 13, 2021.

Please do not hesitate to contact Mithun Vyas at 561-694-3842 or via email at Mithun.Vyas@nexteraeenergy.com if you should have any questions or comments regarding this request.

Sincerely,

DG New York CS, LLC



By: _____

Name: Matthew G. Ulman

Title: Vice President

EXHIBIT A

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RECITALS

WHEREAS, DG New York CS, LLC, a Related Person of the Company ("Assignor") entered into a certain straight-lease transaction with the Agency dated as of April 1, 2021 in relation to a Project consisting of the following: (A) (1) the acquisition of a leasehold interest in an approximately 42 acre parcel of land (calculated for closing as 39.199 acres, the "Land") located on Riley Road in the town of Cortlandville, Cortland County, New York, (2) the installation of a solar photovoltaic facility on the Land with an approximate 5 megawatt capacity (the "Facility"), and (3) the acquisition and installation therein and thereon of certain fixtures and equipment (the "Equipment"), all of the foregoing to constitute a solar photovoltaic facility to be operated by the Company (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency and the Assignor executed certain documents with respect to the Project all dated as of April 1, 2021 including an Underlying Lease Agreement, Uniform Project & Lease Agreement, Payment In Lieu of Tax Agreement and other related straight-lease transaction documents (collectively the "Straight-Lease Documents");

WHEREAS, Assignor has assigned the Project Facility and Straight-Lease Documents to Company; and

WHEREAS, pursuant to a Credit Agreement and related financing documents to be executed by the Company, certain of the Company's affiliates, and the Lenders party thereto, including **KEYBANK NATIONAL ASSOCIATION**, acting as collateral agent for the Secured Parties party thereto (the "Collateral Agent"), the Lenders are making a loan (the "Loan") to the Company to finance a portfolio of solar photovoltaic facilities including

the Project Facility, and the Company desires to collaterally assign certain of its rights and obligations under the Straight-Lease Documents to the Collateral Agent for the benefit of the Secured Parties as security for the Loan.

NOW THEREFORE, in consideration of the foregoing recitals, the agreements, promises and covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Consent hereby agree as follows:

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2. **Attornment.** In the event that Collateral Agent exercises its remedies under the Loan Documents, the Agency agrees that (a) the Straight-Lease Documents shall remain in full force and effect, (b) it will make full and complete attornment with respect to the Straight-Lease Documents (without the necessity of any other or further attornment or instrument) to Collateral Agent (and any such exercise of remedies shall not trigger a recapture of the Financial Assistance) and (c) Collateral Agent shall be entitled to all of the rights of the Company under the Straight-Lease Documents including, without limitation, the Financial Assistance. Notwithstanding anything contained herein to the contrary, Company shall provide the Agency with reasonable notice prior to the exercise of Collateral Agent's remedies under the Loan Documents.

3. **Collateral Agent's Right to Cure Company Default.** If any breach or default on the part of the Company occurs under the Straight-Lease Documents and the Company fails to cure the same within any applicable cure or grace period (any such uncured breach or default being referred to herein as a "Company Default"), Collateral Agent shall have the right, but not the obligation, to cure or cause the cure of such Company Default on the same terms and under the same conditions as the Company under the Straight-Lease Documents.

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If to Collateral Agent:

KeyBank National Association,
127 Public Square
Cleveland, OH 44114-1306
Tel: (216) 689-7669

If to Agency:

Cortland County Industrial Development Agency
40 Main Street, Suite A
Cortland, New York 13045

If to Company:

DG Empire Shine, LLC
700 Universe Boulevard
Juno Beach, Florida 33408

or to such other address the party to receive such notice may have theretofore furnished to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Collateral Agent herein is required to be given.

4.2 Third Party Beneficiary. The Parties agree that the Collateral Agent shall be a third-party beneficiary to this Agreement and is entitled to the rights and benefits accruing to the Collateral Agent hereunder and may enforce the provisions hereof as if it were a direct party hereto.

4.3 Counterparts. This Consent may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent.

4.4 Governing Law. This Consent and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of New York.

4.5 Successors and Assigns. This Consent, and the terms, covenants and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto and each of their successors and assigns.

4.6 General. This Consent may not be modified or amended except by written agreement of each of the parties hereto. The headings contained herein have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Consent, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Consent, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of

this Consent shall be valid and enforceable to the fullest extent permitted by law. This Consent represents the entire agreement between the parties and all prior negotiations and communications between the parties concerning the subject loan are superseded hereby.

SIGNATURE PAGES FOLLOW

SIGNATURE PAGE TO CONSENT TO COLLATERAL ASSIGNMENT

COMPANY:
DG EMPIRE SHINE, LLC

By:


Name: Matthew G. Ulman
Title: Vice President

SIGNATURE PAGE TO CONSENT TO COLLATERAL ASSIGNMENT

AGENCY:

**CORTLAND COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Garry VanGorder
Name: Garry VanGorder
Title: Executive Director

DG EMPIRE BRIGHT, LLC (f/k/a LAPEER-CORTLAND SOLAR, LLC)
700 Universe Blvd.
Juno Beach, Florida 33408

November 23, 2021

Cortland County Industrial Development Agency
37 Church Street
Cortland, New York 13045
Attn: Executive Director

with copy to:

Barclay Damon, LLP
125 East Jefferson Street
Syracuse, New York 13202
Attn: John P. Sidd, Esq.

Re: UNIFORM PROJECT & LEASE AGREEMENT between Cortland County Industrial Development Agency (“Agency” or “you”) and DG Empire Bright, LLC f/k/a Lapeer-Cortland Solar, LLC (“Company” or “we”) dated as of October 1, 2019 (the “Lease Agreement”); LEASE TO AGENCY between the Agency and the Company dated October 1, 2019 (the “Lease to Agency”); PAYMENT IN LIEU OF TAX AGREEMENT, between Agency and Company, dated October 1, 2019 (the “PILOT Agreement”, and together with the Lease Agreement, Lease to Agency and other Basic Documents, the “Agreements”)

Ladies and Gentlemen:

Capitalized terms not otherwise defined herein shall have the same meaning as set forth in the Agreements. The indirect parent (“Sponsor”) of Company is in the process of financing a portfolio of distributed generation projects (the “Financing”) which includes the Project. In order to consummate the Financing in an efficient manner, Sponsor is undertaking an internal restructuring of the project companies involved in the Financing (the “Restructuring”). In connection with the Restructuring and the Merger, we hereby give you notice that Company has undergone a name change to become DG Empire Bright, LLC (the “Name Change”). Accordingly, from and after the Name Change, “Company” under the Agreement shall mean and refer to DG Empire Bright, LLC.

The Financing Parties will require that Company collaterally assign the Agreements as security for the Financing (the “Collateral Assignment”). In accordance with Section 9.1 of the Lease Agreement and Section 3.6 of the Lease to Agency, we hereby respectfully request that you consent to the Collateral Assignment by executing the Consent to Collateral Assignment in substantially the form attached hereto as Exhibit A. We also request that this matter be placed on the agenda for the Agency’s next Board meeting on December 13, 2021.

Please not hesitate to contact Mithun Vyas at 561-694-3842 or via email at Mithun.Vyas@nexterenergy.com if you should have any questions or comments.

Sincerely,

**DG EMPIRE BRIGHT, LLC (f/k/a LAPEER-
CORTLAND SOLAR, LLC)**

By: M. G. Ulman

Name: Matthew G. Ulman

Title: Vice President

Exhibit A

Form of Consent to Collateral Assignment

**CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY
CONSENT TO COLLATERAL ASSIGNMENT**

This **CONSENT TO COLLATERAL ASSIGNMENT** (this "Consent"), dated as of the ___ day of December, 2021 is entered into by and among the **CORTLAND 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 at 40 Main Street, Suite A, Cortland, New York (the "Agency") and **DG EMPIRE BRIGHT, LLC**, f/k/a Lapeer Cortland Solar, LLC, a limited liability company organized and existing under the laws of the State of Delaware having an office for the transaction of business at 700 Universe Boulevard, Juno Beach, Florida 33408 ("Company").

RECITALS

WHEREAS, the Company entered into a certain straight-lease transaction with the Agency dated as of October 1, 2019 in relation to a Project consisting of the following: (A) (1) the acquisition of a leasehold interest in an approximately 86 acre parcel of land (the "Land") located at 2223 Clarks Corners Road and 2160 Harvey Hill Road in the Town of Lapeer, Cortland County, New York, (2) the installation of a solar photovoltaic facility on the Land with an approximate 15 megawatt capacity (the "Facility"), and (3) the acquisition and installation therein and thereon of certain fixtures and equipment (the "Equipment"), all of the foregoing to constitute a solar photovoltaic facility to be operated by the Company (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales taxes, real estate transfer taxes, mortgage recording taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Agency and the Company executed certain documents with respect to the Project all dated as of October 1, 2019 including an Underlying Lease Agreement, Uniform Project & Lease Agreement, Payment In Lieu of Tax Agreement and other related straight-lease transaction documents (collectively the "Straight-Lease Documents"); and

WHEREAS, pursuant to a Credit Agreement and related financing documents to be executed by the Company, certain of the Company's affiliates, and the Lenders party thereto, including **KEYBANK NATIONAL ASSOCIATION**, acting as collateral agent for the Secured Parties party thereto (the "Collateral Agent"), the Lenders are making a loan (the "Loan") to the Company to finance a portfolio of solar photovoltaic facilities including the Project Facility, and the Company desires to collaterally assign certain of its rights and obligations under the Straight-Lease Documents to the Collateral Agent for the benefit of the Secured Parties as security for the Loan.

NOW THEREFORE, in consideration of the foregoing recitals, the agreements, promises and covenants herein and other good and valuable consideration, the receipt

and sufficiency of which are hereby acknowledged, the parties to this Consent hereby agree as follows:

1. Consent to Pledge. The Agency hereby acknowledges and consents to the pledge by the Company to Lender of the Straight-Lease Documents (excepting therefrom the Agency's Unassigned Rights (as defined in the Uniform Project & Lease Agreement) as security and collateral for the obligations of the Company to Collateral Agent for the benefit of the Secured Parties pursuant to the terms and conditions of the documents evidencing, securing or otherwise executed in connection with the Loan (collectively, the "**Loan Documents**"). Nothing contained herein shall be construed to constitute a consent by the Agency to further assignment of the Straight-Lease Documents by the Collateral Agent without Collateral Agent first obtaining the written approval from the Agency.

2. Attornment. In the event that Collateral Agent exercises its remedies under the Loan Documents, the Agency agrees that (a) the Straight-Lease Documents shall remain in full force and effect, (b) it will make full and complete attornment with respect to the Straight-Lease Documents (without the necessity of any other or further attornment or instrument) to Collateral Agent (and any such exercise of remedies shall not trigger a recapture of the Financial Assistance) and (c) Collateral Agent shall be entitled to all of the rights of the Company under the Straight-Lease Documents including, without limitation, the Financial Assistance. Notwithstanding anything contained herein to the contrary, Company shall provide the Agency with reasonable notice prior to the exercise of Collateral Agent's remedies under the Loan Documents.

3. Collateral Agent's Right to Cure Company Default. If any breach or default on the part of the Company occurs under the Straight-Lease Documents and the Company fails to cure the same within any applicable cure or grace period (any such uncured breach or default being referred to herein as a "**Company Default**"), Collateral Agent shall have the right, but not the obligation, to cure or cause the cure of such Company Default on the same terms and under the same conditions as the Company under the Straight-Lease Documents.

4. Miscellaneous.

4.1 Notices. Any notices required or permitted to be given with this Consent shall be in writing and shall be deemed to have been given if and when received if personally delivered, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth in the documents and any notice to Collateral Agent shall be addressed as follows:

If to Collateral Agent:

KeyBank National Association,
127 Public Square
Cleveland, OH 44114-1306
Tel: (216) 689-7669

If to Agency:

Cortland County Industrial Development Agency
40 Main Street, Suite A
Cortland, New York 13045

If to Company:

DG Empire Bright, LLC
700 Universe Boulevard
Juno Beach, Florida 33408

or to such other address the party to receive such notice may have theretofore furnished to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Collateral Agent herein is required to be given.

4.2 Third Party Beneficiary. The Parties agree that the Collateral Agent shall be a third-party beneficiary to this Agreement and is entitled to the rights and benefits accruing to the Collateral Agent hereunder and may enforce the provisions hereof as if it were a direct party hereto.

4.3 Counterparts. This Consent may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent.

4.4 Governing Law. This Consent and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of New York.

4.5 Successors and Assigns. This Consent, and the terms, covenants and conditions hereof, shall be binding upon and inure to the benefit of the parties hereto and each of their successors and assigns.

4.6 General. This Consent may not be modified or amended except by written agreement of each of the parties hereto. The headings contained herein have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Consent, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Consent, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Consent shall be valid and enforceable to the fullest extent permitted by law. This Consent represents the entire agreement between the parties and all prior negotiations and communications between the parties concerning the subject loan are superseded hereby.

SIGNATURE PAGES FOLLOW

SIGNATURE PAGE TO CONSENT TO COLLATERAL ASSIGNMENT

COMPANY:
DG EMPIRE BRIGHT, LLC

By:



Name: Matthew G. Ulman
Title: Vice President

SIGNATURE PAGE TO CONSENT TO COLLATERAL ASSIGNMENT

AGENCY:

**CORTLAND COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

By: Garry VanGorder
Name: Garry VanGorder
Title: Executive Director

The Annual Meeting of the Cortland County Business Development Corp was convened in public session on December 13, 2021, at 12:00 o'clock p.m., local time via the online web-based Zoom video and audio conference platform in accordance with Executive Order No. 202.1 issued by the Governor of the State of New York on March 12, 2020, as thereafter extended.

The meeting was called to order by the Chairman and, upon roll being called, the following directors of the BDC were:

PRESENT:

ABSENT:

FOLLOWING PERSONS WERE ALSO PRESENT:

Garry VanGorder	Executive Director
Karen Niday	Chief Financial Officer
Eric Mulvihill	Economic Development Specialist
John P. Sidd, Esq.	BDC Counsel

The following resolution was offered by _____, seconded by _____, to wit:

Resolution No.:

**RESOLUTION ADOPTING CERTAIN BDC POLICIES,
STATEMENTS AND PROCEDURES**

WHEREAS Cortland County Business Development Corp. is a not-for-profit corporation duly organized and validly existing under the laws of the State of New York; and

WHEREAS the BDC desires to adopt certain policies, statements, and procedures to assist it in the implementation of its stated purposes and in compliance with the Public Authorities Accountability Act of 2005 and the Public Authorities Reform Act of 2009, as amended.

NOW, THEREFORE, BE IT RESOLVED BY THE DIRECTORS OF CORTLAND COUNTY BUSINESS DEVELOPMENT CORPORATION AS FOLLOWS:

The BDC hereby adopts the following policies and guidelines in the form presented at this meeting:

1. Code of Ethics
2. Compensation, Reimbursement and Attendance Policy
3. Conflict of Interest Policy
4. Defense and Indemnification Policy
5. Director Attendance Policy
6. Discretionary Funds Policy
7. Disposition of Real Property Guidelines
8. Fixed Asset Capitalization Policy
9. Investment Policy
10. Mission Statement and Performance Measures
11. Organizational Chart
12. Personnel Policy
13. Procurement of Goods and Services Policy
14. Real Property Acquisition Policy
15. Records Retention and Disaster Plan
16. Revolving Loan Fund Program
17. Revolving Loan Watch List Policy
18. Sexual Harassment Prevention Policy
19. Travel Policy
20. Web Usage Policy
21. Whistleblower Policy

This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Michael McMahon	VOTING	_____
Stephen Compagni	VOTING	_____
Clint Brooks	VOTING	_____
John O. Reagan	VOTING	_____
Johanna Ames	VOTING	_____
Donald Richards	VOTING	_____
Kathleen Burke	VOTING	_____
Lori Law	VOTING	_____
Dan Mones	VOTING	_____
Paul Dries	VOTING	_____
Jason Hage	VOTING	_____
Gerald Contento Jr	VOTING	_____
VACANT	VOTING	_____

The foregoing Resolution was thereupon declared and duly adopted.

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

I, the undersigned Secretary of Cortland County Business Development Corporation (the "BDC"), DO HEREBY CERTIFY, that I have compared the foregoing extract of the minutes of the meeting of the directors of the BDC, including the Resolution contained therein, held on December 13, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the BDC and of such Resolution set forth therein and of the whole of said original so far as the same related to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all directors of the BDC had due notice of said meeting; (B) said meeting was in all respect duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public and due notice of the time and place of said meeting was given in accordance with such Open Meetings Law; and (D) there was a quorum of the directors of the BDC present through said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed, or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of December 2020.

Clint Brooks, Secretary

**CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY RESOLUTION
APPOINTING OFFICERS**

APPOINTMENT OF OFFICERS.

RESOLVED, that the following persons are elected to the office(s) indicated next to their names to serve until their successor(s) shall be duly elected, unless he or she resigns, is removed from office or is otherwise disqualified from serving as an officer of this corporation, to take their respective office(s) immediately upon such appointment:

Office	Name
President	_____
Vice President	_____
Treasurer	_____
Secretary	_____
Chief Executive Officer	_____
Chief Financial Officer	_____

RESOLVED, that the officers of this corporation are, and each acting alone is, hereby authorized to do and perform any and all such acts, including execution of any and all documents and certificates, as such officers shall deem necessary or advisable, to carry out the purposes and intent of the foregoing resolutions, AND BE IT FURTHER

RESOLVED, that any actions taken by such officers prior to the date of the foregoing resolutions adopted hereby that are within the authority conferred thereby are hereby ratified, confirmed and approved as the acts and deeds of this corporation.

**CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY RESOLUTION
APPOINTING STANDING COMMITTEES FOR 2022-2023**

RESOLVED, that the following persons are elected to the Agency Standing Committees which include Audit, Finance, Governance, and Personnel. These officers shall serve until their successor(s) shall be duly elected, unless he or she resigns, is removed from office or is otherwise disqualified from serving as an officer of this corporation.

Committee	Name(s)
Audit	_____
Finance	_____
Governance	_____
Personnel	_____

AND BE IT FURTHER RESOLVED that these officers shall serve on the standing committees until December 31, 2023

**CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY RESOLUTION
APPOINTING OFFICERS**

APPOINTMENT OF OFFICERS.

RESOLVED, that the following persons are elected to the office(s) indicated next to their names to serve until their successor(s) shall be duly elected, unless he or she resigns, is removed from office or is otherwise disqualified from serving as an officer of this corporation, to take their respective office(s) immediately upon such appointment:

Office	Name
President	_____
Vice President	_____
Treasurer	_____
Secretary	_____
Chief Executive Officer	_____
Chief Financial Officer	_____

RESOLVED, that the officers of this corporation are, and each acting alone is, hereby authorized to do and perform any and all such acts, including execution of any and all documents and certificates, as such officers shall deem necessary or advisable, to carry out the purposes and intent of the foregoing resolutions, AND BE IT FURTHER

RESOLVED, that any actions taken by such officers prior to the date of the foregoing resolutions adopted hereby that are within the authority conferred thereby are hereby ratified, confirmed and approved as the acts and deeds of this corporation.

**CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY RESOLUTION
APPOINTING STANDING COMMITTEES FOR 2022-2023**

RESOLVED, that the following persons are elected to the Agency Standing Committees which include Audit, Finance, Governance, and Personnel. These officers shall serve until their successor(s) shall be duly elected, unless he or she resigns, is removed from office or is otherwise disqualified from serving as an officer of this corporation.

Committee	Name(s)
Audit	_____
Finance	_____
Governance	_____

AND BE IT FURTHER RESOLVED that these officers shall serve on the standing committees until December 31, 2023

**CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY RESOLUTION
APPOINTING SIGNATORIES**

WHEREAS, the Cortland County Industrial Development Agency (IDA) Board of Directors is determined to grant signing and authority to certain person(s) described hereunder.

RESOLVED, that the IDA Board of Directors is hereby authorized and approved to authorize and empower the following individual(s) to make, execute, endorse, and deliver in the name of and on behalf of the agency, written instruments, agreements, documents, execution of deeds, powers of attorney, transfers, assignments, contracts, obligations, certificates, and other instruments of whatever nature entered into by this Agency subject to Agency by-laws.

Name(s):

Position/Title:

The undersigned certifies that he is the properly elected and qualified Secretary of the agency which duly conforms pursuant to the laws of the state of New York, and that said meeting was held in accordance with state law and with the Bylaws of the above-named agency.

This resolution has been approved by the Board of Directors of Cortland County IDA on December 13, 2021.

I, as authorized by the agency, hereby certify and attest that all the information above is true and correct.

Clint Brooks
Secretary



Cortland County
Industrial Development Agency

Finance Report

**Comments to Financial Statements
Cortland County IDA
November 30, 2021**

Revenue:

- \$500 application fee received from Greek Peak Holdings for a pending new application requesting sales tax assistance on new projects. More work is being done to complete their application prior to board review. Anticipating the completed application for the January 2022 meeting.

Disbursements:

- Hancock Estabrook, legal \$ 2,212.50.

Cortland County IDA
Balance Sheet
November 30, 2021

ASSETS

CURRENT ASSETS	
NBT - Checking 5112	\$ 88,285.39
NBT Money Mkt	49,394.99
Project Investment Fund #1	306,813.81
Project Investment Fund #2	415,804.70
Project Investment Fund #3	225,169.69
Project Investment Fund #4	225,172.50
Prepaid Expenses	<u>1,173.74</u>
TOTAL CURRENT ASSETS	1,311,814.82
PROPERTY AND EQUIPMENT	
Land-Railroad Properties	209,818.00
Land-Contento Property	91,835.00
Leasehold Improvements	3,376.80
Accum.Depreciation-L.H.I.	(1,015.56)
Office Equipment	6,937.14
Accum.Depreciation-Equip	<u>(6,418.04)</u>
NET PROPERTY & EQUIPMENT	304,533.34
RECEIVABLES	
TOTAL RECEIVABLES	0.00
TOTAL ASSETS	\$ 1,616,348.16

LIABILITIES/FUND BALANCE

CURRENT LIABILITIES	
TOTAL CURRENT LIABILITIES	0.00
LONG TERM LIABILITIES	
Due to BDC-Contento Property	\$ <u>91,835.00</u>
TOTAL LONG TERM LIABILITIES	91,835.00
TOTAL LIABILITIES	91,835.00
FUND BALANCE	
Unrestricted Earnings	927,213.80
Net Income	<u>597,299.36</u>
TOTAL FUND BALANCE	1,524,513.16
TOTAL LIAB & FUND BALANCE	\$ 1,616,348.16

Cortland County IDA
Income Statement
For the Eleven Months Ending November 30, 2021

	Current Month	Year to Date
REVENUE		
Application Fees	\$ 500.00	\$ 500.00
Project Fee	0.00	618,052.24
Interest on Deposits	79.20	1,281.42
Misc	0.00	90.00
Land Lease	0.00	16,333.00
Cort Crown Homes PILOT	0.00	20,661.30
Creamery Hills PILOT	0.00	51,272.48
83-85 Main LLC PILOT	0.00	14,000.00
Cortland Commerce PILOT	0.00	110,451.31
Lapeer Cortland Solar PILOT	0.00	45,000.00
	<hr/>	<hr/>
Total Revenue	579.20	877,641.75
	<hr/>	<hr/>
TOTAL REVENUE	579.20	877,641.75
EXPENSES		
Accounting	0.00	6,800.00
Bank Charges	0.00	60.00
Legal	2,212.50	3,869.72
Office Supplies/Maintenance	150.00	801.34
Property Taxes	0.00	194.30
Property Insurance	0.00	33.80
D & O Insurance	130.42	1,434.58
Depreciation	0.00	763.56
Cort Crown Homes PILOT	0.00	20,661.30
Cort Commerce PILOT	0.00	110,451.31
Creamery Hills PILOT	0.00	51,272.48
83-85 Main LLC PILOT	0.00	14,000.00
Lapeer Cortland Solar PILOT	0.00	45,000.00
BDC Admin Support	0.00	25,000.00
	<hr/>	<hr/>
TOTAL EXPENSES	2,492.92	280,342.39
NET INCOME	\$ (1,913.72)	\$ 597,299.36
	<hr/>	<hr/>



Cortland County
Industrial Development Agency

Executive Director's Report



IDA Director's Report

December 13, 2021

Staff has been busy on a number of fronts throughout the fall months:

- **APEX Manufacturing Site**

We have identified a potential way to address issues at the demo site. Details to follow.

- **Potential support for projects**

We have been working with a number of potential applicants to help with their projects, but none are ready to move forward at this point. The projects focus on:

- market-rate housing including a renovation of an old manufacturing space and a former elementary school;
- Potential capital investment at Greek Peak; and
- Speculative construction of multiple spaces aiming at warehousing and distribution, ag manufacturing and related business sectors.

- **Solar Development**

- The IDA hosted a December 6 meeting of Homer and Cortlandville town board representatives and their attorneys, town assessors, a regional solar expert and several citizens to discuss a new state mandate regulating the assessment of renewable energy projects.

We hosted the meeting to facilitate discussion among the stakeholders as they seek more information on a complex topic.

- We are concerned about the status of the solar projects off of Locust Avenue in the town of Cortlandville and the city of Cortland. The CCIDA has provided final inducement in support of these projects but have not been able to bring the developers to the closing table. The city project, at least, is apparently underway. The Cortlandville project has been held up by some legal proceedings. Details on next steps to follow.



- The large 90 MW solar project for the towns of Homer, Cortlandville and Solon is also moving forward although it is unclear at this point whether the developer will seek IDA assistance. A new state mandate impacting the way these projects are assessed is designed to make the development of renewable projects more cost-effective, and while each project is different, the resultant impact on the need for an IDA PILOT is in question.
- At this point, the IDA has no other solar PILOT requests under consideration, although there is some speculation that this may change with the expiration of Cortlandville's moratorium on such projects.
- **Perplexity Creek**
 - Heavy rains and resultant flooding have plagued the businesses along Huntington Street for some time as waters running through Perplexity Creek overflow the bank and into the adjacent properties.

Examination of the creek along rail owned by the CCIDA and leased to the NYS&W railroad indicate several areas where overgrowth and debris are inhibiting the water flow toward the Pendleton Street culvert and, eventually, to the river.

Our lease agreement with the railroad requires it to maintain the tracks and anything else in the ROW, including the creek. After a meeting this week the railroad has agreed to its responsibility and will soon begin some dredging of the creek bed.
- **BMC**
 - The agency continues to work with the new owner of the site to market space he's not using for his business. The facility is unlike most in the region and there has been much interest in it of late.