



## Minutes of December 13, 2021

The annual meeting of the Cortland County Industrial Development Agency was called to order by Chairman Michael McMahon at 12:00 P.M. Per New York State Executive Order No. 202.1, the meeting was held remotely via the Zoom video conferencing platform.

Michael McMahon	Chairman	Present
Clint Brooks	Secretary	Present
Donald Richards	Member	Present
Johanna Ames	Member	Present
John O. Reagan	Member	Present
Dr. Kathleen Burke	Member	Present
Steve Compagni	Member	Present
Garry VanGorder	Executive Director	Present
Karen Niday	Chief Financial Officer	Present
John Sidd	Agency Counsel	Present
Eric Mulvihill	Development Specialist	Present
Marie Weiss	Guest	Remote
Gerald Contento Jr.	BDC Director	Remote
Lori Law	BDC Director	Present
Dan Mones	BDC Director	Present
Paul Heider	Chair, Cortland County Legislature	Present
Jason Hage	BDC Director	Present

**Minutes** – Mr. Richards made a motion to accept the minutes of the September 13<sup>th</sup>, 2021, meeting. Ms. Ames seconded the motion; all voting in favor, none opposed. The motion carried.

### New Business –

- 1.) **Authorize assignment of DG New York CS, LLC & LaPeer-Cortland LLC lease agreements to DG Empire Shine, LLC** – Mr. Sidd provided the background for the request by the owners of the DG New York Solar to refinance their assets. Mr. McMahon made a motion to authorize the collateral assignments as requested by DG New York, Mr. Richards seconded the motion; all voting in favor, none opposed.
  
- 2.) **Review 2021 PILOT Employment Affidavits** – Mr. VanGorder and Ms. Niday reviewed the annual affidavits. Mr. VanGorder said the Cortland Commerce Center (the former Smith Corona plant) has termed out and is now at full taxable status.

- 3.) **Adopt 2022 IDA Policies** - Mr. McMahon made a motion to adopt the 2022 policies, Mr. Compagni seconded the motion; all voting in favor, none opposed.
- 4.) **Nominate/Elect Officers** – Mr. McMahon made a motion to accept the proposed slate of officers (see the attached resolution), Mr. Compagni seconded the motion; all voting in favor, none opposed
- 5.) **Appoint Committees (Audit, Finance, Governance)** - Mr. McMahon made a motion to accept the proposed standing committee assignments (see the attached resolution), Mr. Compagni seconded the motion; all voting in favor, none opposed
- 6.) **Authorize Signatories** – Mr. McMahon made a motion to authorize the agency signatories (see the attached resolution), Mr. Compagni seconded the motion; all voting in favor, none opposed.

## **Reports**

1.) **Finance Report** – See the attached report.

2.) **Director's Report** – See the attached report. Mr. VanGorder discussed the status of the final inducement of the Locust Ave. solar project. He said the project has not yet closed and the Courts have upheld the Town of Cortlandville's variance denial for the project. The applicant negotiated for a new easement for the project but, communication with the IDA has ceased. Ms. Niday has issued an invoice to the applicant for the agency expenses that have been incurred to date. Mr. VanGorder said the applicant may be considering abandoning the previously approved PILOT in favor of the recently enacted New York State alternative energy systems assessing model. If the applicant remits the fees as requested, he may ask the board to consider extending the deadline for final inducement for the PILOT, otherwise a resolution to rescind the previously approved preliminary inducement will be brought to the board for consideration.

## **Executive Session**

Mr. McMahon made a motion to enter 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. Ms. Ames seconded the motion, all voting in favor; none opposed.

The Board entered executive session at 12:20 PM.

Mr. McMahon made a motion to purchase the former Apex industrial site at 43-45-47 Cleveland Street (Tax Parcel ID: 87.37-02-06.000) in an amount not to exceed \$25,000. Mr. Regan seconded the motion, all voting in favor; none opposed.

Mr. McMahon made a motion to return to regular session at 12:56 PM, Mr. Richards seconded the motion; all voting in favor, none opposed.

**Adjourn** – the meeting was adjourned at 12:57 PM.

**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](mailto: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:



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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](mailto: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

### 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 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:

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 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

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**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@nexterenergy.com](mailto: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

The Annual Meeting of the Cortland County Industrial Development Agency (the "Agency") 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 members of the Agency were:

**PRESENT:**

Michael McMahon  
Stephen Compagni  
Clint Brooks  
John O. Reagan  
Johanna Ames  
Donald Richards  
Kathleen Burke

**ABSENT:**

**FOLLOWING PERSONS WERE ALSO PRESENT:**

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

The following resolution was offered by Chairman McMahon, seconded by Mr. Compagni, to wit:

**Resolution No.: 2021-12-13-01**

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

WHEREAS, Cortland County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 77 of the 1974 Laws of New York, as amended, constituting Section 902 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of manufacturing facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Agency 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 thereafter amended.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF CORTLAND COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

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

1. Acquisition of Real Property Policy
2. Code of Ethics
3. Compensation, Reimbursement and Attendance Policy
4. Conflict of Interest Policy
5. Defense and Indemnification Policy
6. Development Policy
7. Discretionary Funds Policy
8. Disposition of Real and Personal Property Policy
9. Fee Schedule
10. Financial Assistance Recapture
11. Fixed Asset Capitalization
12. General Practices and Operating Procedures
13. Investment Policy
14. Member Attendance Policy
15. Mission Statement
16. Organizational Chart
17. Personnel and Whistleblower Policy
18. Procurement of Goods and Services Policy
19. Project Approval Process
20. Records Retention and Disaster Plan
21. Sexual Harassment Prevention Policy
22. Travel 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	AYE
Stephen Compagni	VOTING	AYE
Clint Brooks	VOTING	AYE
John O. Reagan	VOTING	AYE
Johanna Ames	VOTING	AYE
Donald Richards	VOTING	AYE
Kathleen Burke	VOTING	AYE

The foregoing Resolution was thereupon declared duly adopted.

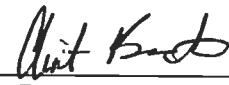
STATE OF NEW YORK      )  
COUNTY OF CORTLAND    ) ss.:

I, the undersigned Secretary of Cortland County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY, that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, 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 Agency 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 members of the Agency 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 members of the Agency 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 and affixed the seal of the Agency this 13<sup>th</sup> day of December 2021.



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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:

<b>Office</b>	<b>Name</b>
President	Michael McMahon
Vice President	Stephen Compagni
Treasurer	John O. Reagan
Secretary	Clint Brooks
Chief Executive Officer	Garry VanGorder
Chief Financial Officer	Karen Niday

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**

RESOLVED, that the following persons are elected to the Agency Standing Committees which include Audit, Finance, Governance. 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.

<b>Committee</b>	<b>Name(s)</b>
Audit	John Reagan, Clint Brooks, Kathleen Burke
Finance	John Reagan, Johanna Ames, Stephen Compagni
Governance	Mike McMahon, Don Richards, Kathleen Burke

AND BE IT FURTHER RESOLVED that these officers shall serve on the standing committees until December 31, 2022

**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.

Name(s):	Position/Title:
Garry VanGorder	Chief Executive Officer
Karen Niday	Chief Financial Officer
Michael McMahon	Chairman
John O. Regan	Treasurer

RESOLVED, that the IDA Board of Directors is hereby authorized and approved to authorize and empower the above-named individual(s) to serve as signatories for this agency subject to agency by-laws.

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