

## **PROJECT AGREEMENT**

THIS PROJECT AGREEMENT (the “Project Agreement”), made as of March 1, 2021, by and between the ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with offices at 333 West Washington Street, Syracuse, New York 13202 (the “Agency”) and SSC LYSANDER LLC, a limited liability company organized and existing under the laws of the State of Florida, having an office for the transaction of business located at 334 Arapahoe Avenue, Boulder, Colorado 80302 (the “Company”).

### **WITNESSETH:**

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

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the “State”) and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

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

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 435 of the Laws of 1970 of the State and Chapter 676 of the Laws of 1975 of the State, as amended (collectively, with the Enabling Act, the “Act”) and is empowered under the Act to undertake the Project (as hereinafter defined) in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Company, on behalf of itself and entities formed or to be formed on behalf of the foregoing, submitted an application (the “Application”) to the Agency requesting the Agency’s assistance with respect to a certain project (the “Project”) consisting of: (A)(1) the acquisition of a leasehold interest in a portion of an approximately 99.64 acre parcel of land located at 8071 River Road (tax map no. 073.-01-24.1) in the Town of Lysander, Onondaga County, New York (the “Land”); (2) the construction on the Land of an approximately 22.26 acre solar power facility including solar panels, electrical equipment and perimeter fencing (the “Facility”); and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (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 real property taxes (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, L. Bradley Clark and Sally E. Clark, as Trustees of the Clark Living Trust (the “Landlord”) are the fee owners of the Land; and

WHEREAS, pursuant to that certain lease agreement, dated as of August 7, 2020 (as amended, supplemented and/or assigned, as of the date hereof and as the same may be further amended from time to time in accordance therewith, the “Property Lease”) between the Landlord and the Company, the Landlord has leased the Land to the Company; and

WHEREAS, the Property Lease shall remain in effect for the term of the Lease Agreement unless otherwise consented to in writing by the Agency; and

WHEREAS, by resolution duly adopted by the members of the Agency on December 8, 2020 (the “Approving Resolution”), the Agency has conferred on the Company in connection with the Project certain financial assistance consisting of an abatement from real property taxes through a 25-year payment in lieu of taxes agreement with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (the “Taxing Jurisdictions”); and

WHEREAS, it has been estimated and confirmed by the Company that the Company has included within its Application for Financial Assistance that the real property tax abatement benefits to be provided to the Company over the 25-year benefit period of the anticipated payment in lieu of taxes agreement are estimated to be approximately \$905,855 (such savings are estimated based on the current assessed value and tax rates of the Taxing Jurisdictions; actual savings are subject to change over the term of the Lease Agreement (as hereinafter defined) depending on any changes to assessed value of the Project Facility and/or tax rates of the Taxing Jurisdictions); and

WHEREAS, the Company proposes to lease the Land and Facility to the Agency, and the Agency desires to lease the Land and Facility from the Company pursuant to the terms of a certain underlying lease to agency dated as of March 1, 2021 (the “Underlying Lease”), by and between the Company and the Agency; and

WHEREAS, the Agency proposes to acquire an interest in the Equipment pursuant to a bill of sale to Agency (the “Bill of Sale to Agency”) from the Company; and

WHEREAS, the Agency proposes to sublease the Project Facility to the Company, and the Company desires to lease the Project Facility from the Agency, upon the terms and conditions set forth in a certain lease agreement dated as of March 1, 2021 (the “Lease Agreement”); and

WHEREAS, in order to define the obligations of the Company regarding payments in lieu of taxes for the Project Facility, the Agency and the Company will enter into a payment in lieu of tax agreement, dated as of March 1, 2021 (the "PILOT Agreement"), by and between the Agency and the Company; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Onondaga County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State to another area in the State and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State; and

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

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Approving Resolution and as more particularly described in the PILOT Agreement and this Project Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

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

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

NOW THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

## ARTICLE I PURPOSE OF PROJECT

Section 1.01 Purpose of Project. It is understood and agreed by the parties hereto that the purpose of the Agency's provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Underlying Lease, Lease Agreement, PILOT Agreement and this Project Agreement in order to, promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of the Project Facility to advance job opportunities, health, general prosperity and economic welfare of the people of the County of Onondaga and to otherwise accomplish the public purpose of the Act.

ARTICLE II  
REAL PROPERTY TAX EXEMPTION

Section 2.01. PILOT Agreement. Attached hereto and made a part hereof is Exhibit A, which contains an executed copy of the PILOT Agreement entered into by and between the Company and the Agency. The amount of real property tax abatement benefit comprising the Financial Assistance shall be approximately \$905,855, which such amount reflects the total estimated real property tax exemptions for the Project Facility (which constitute those taxes that would have been paid if the Project Facility were on the tax rolls and not subject to the PILOT Agreement) of approximately \$1,522,438, less the total payments in lieu of taxes of \$616,583 to be made by the Company to the Taxing Jurisdictions with respect to the Project Facility during the term of the PILOT Agreement. The amount of estimated real property tax exemptions is estimated based on an assumed assessed value of the Project Facility and assumed future tax rates of the Taxing Jurisdictions; therefore the real property tax abatement benefit is estimated because it is calculated using the estimated real property tax exemptions. The actual amount of real property tax abatement benefit is subject to change over the term of the PILOT Agreement depending on any changes to assessed value and/or tax rates of the Taxing Jurisdictions. The PILOT Agreement contained in Exhibit A attached hereto reflects an annual breakdown of the payments in lieu of taxes to be made to the Taxing Jurisdictions in each year during the term of the PILOT Agreement (“Total PILOT”), an estimate value of the real property tax exemptions (“Full Tax Payment without PILOT”), and an estimated value of the real property tax abatement benefits (“Net Exemptions”).

ARTICLE III  
INTENTIONALLY OMITTED

ARTICLE IV  
INTENTIONALLY OMITTED

ARTICLE V  
COMMITMENTS AND REPORTING

Section 5.01. Compliance Commitments. The Company agrees and covenants that it shall meet and maintain the following commitments beginning in the first year in which Financial Assistance is so claimed, and continuing through the term of the PILOT Agreement:

(a) The Company did not employ full time equivalent (“FTE”) employees within the County of Onondaga at the date of the Application for Financial Assistance (the “Baseline FTE”). The Company’s application estimated the Company would not create any jobs at the Project Facility over the course of the first five (5) years following completion of the Project Facility. Therefore, there is no employment commitment during the Term hereof.

(b) The Company shall annually provide to the Agency certain information to confirm that the Project is achieving the investment and other objectives of the Project (the “Reporting Commitment”).

Section 5.02. Reporting Requirement. (A) The Company agrees, whenever requested by the Agency, to provide and certify or cause to be certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably considers necessary or appropriate, including but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation. The Company also agrees to provide and certify information concerning its finances and other topics as the Agency considers appropriate.

(B) As part of the commitments set forth in Section 5.01 and paragraph (A) of this Section 5.02, the Company shall provide annually, to the Agency, a certified statement and supporting documentation evidencing the benefits provided to Onondaga County. Exhibit B contains a form of annual certification that the Company must complete and submit to the Agency on an annual basis. The Agency reserves the right to modify such form to require additional information that the Agency must have in order to comply with its reporting requirements under the Act.

ARTICLE VI  
SUSPENSION, DISCONTINUATION, RECAPTURE  
AND/OR TERMINATION OF FINANCIAL ASSISTANCE

Section 6.01. Suspension, Discontinuation, Recapture and/or Termination of Financial Assistance. It is understood and agreed by the Parties hereto that the Agency is entering into the Underlying Lease, the Lease Agreement, the PILOT Agreement and this Project Agreement in order to provide Financial Assistance to the Company for the Project Facility and to accomplish the public purposes of the Act.

(a) The Company attests that it understands and agrees to the recapture provisions of the Agency's Uniform Tax Exemption Policy (the "Policy").

(b) In accordance with the Policy and the Approving Resolution, the Company covenants and agrees that the Agency shall have the right to suspend, discontinue, recapture or terminate all or any portion of any Financial Assistance:

(1) the Company fails to meet its Reporting Commitment ("Reporting Failure"); or

(2) there otherwise occurs any event of default under any Basic Document (as that term is defined in the Lease Agreement") (each, an "Event of Default") or a material violation of the terms and conditions of any Basic Document (a "Material Violation").

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

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

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

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

(d) If a State-Mandated Recapture Event occurs or the Agency makes a Determination, the Company agrees and covenants that it will: (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company; and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such

amounts to the State of New York and/or appropriate affected tax jurisdictions, unless agreed to otherwise by any local taxing jurisdiction. The Company further understands and agrees that in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the State sales and use tax due from the Company, together with any relevant penalties and interest due on such amounts.

(e) In the event (x) the Project Facility is sold or closed, the occurrence of a Noncompliance Event and (y) the Agency determines by resolution that no substantial future economic benefit is likely to accrue to the community, then the value of the Financial Assistance extended to the Company by the Agency shall be subject to recapture as described below in this paragraph (e).

(1) The recapture payment required to be paid by the Company to the Agency shall be equal to the difference between any PILOT payments made by the Company and the real property taxes that have would be paid by the Company if the Project Facility were not under the supervision, jurisdiction or control of the Agency.

<u>(2) Time from Completion Date</u> <u>(as defined in the Lease Agreement)</u>	<u>Tax Saving</u>
1 Year	80%
2 Years	60%
3 Years	40%
4 Years	20%
5 Years	10%

## ARTICLE VII MISCELLANEOUS PROVISIONS

### Section 7.01. Hold Harmless Provisions.

(a) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agree that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agree to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to property or bodily injury to or death of any and all persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any person or property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising

as a result of the Agency's obligations under this Project Agreement or the enforcement of or defense of validity of any provision of this Project Agreement, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Sections 4.01 and 4.02 hereof, and (4) all causes of action and reasonable attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the gross negligence or intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

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

(c) To effectuate the provisions of this Section 7.01, the Company agrees to provide for and insure, in the liability policies required by Section 7.02 of this Project Agreement, its liabilities assumed pursuant to this Section 7.01.

(d) Notwithstanding any other provisions of this Project Agreement, the obligations of the Company pursuant to this Section 7.01 shall remain in full force and effect after the termination of this Project Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses, charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

**Section 7.02. Insurance Required.**

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

(b) The Company agrees that it shall cause its general contractor for the Project to maintain, effective as of the date hereof and until the construction of the Project Facility is complete, insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, with the Agency named on each such policy as an additional insured.



Section 7.08. Governing Law. This Project Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Onondaga County, New York.

Section 7.09. Term. Except as specifically provided otherwise, the term of this Project Agreement shall be the longer of: (1) the term of the Lease Agreement; or (2) five years following the Project's Completion Date. The Project will remain "active" for purposes of Section 874(12) of General Municipal Law and the Agency's Annual Assessment Policy during the term of this Project Agreement.

Section 7.10. Joint and Several Liability. In the event that this Agreement is executed by more than one party as Indemnitor, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against the Company, whether or not an action is brought against any other person or whether or not any other person is joined in such action or actions.

Section 7.11. Section Headings. The headings of the several Sections in this Project Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Project Agreement.

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

ONONDAGA COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By:   
Robert M. Petrovich  
Executive Director

SSC LYSANDER LLC  
a Florida limited liability company

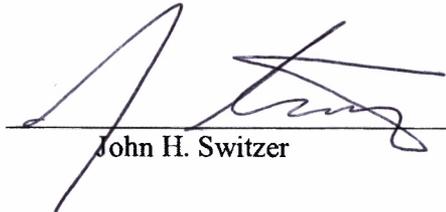
By: Summit Solar Capital, LLC  
Its: Manager

By:   
John H. Switzer  
Principal

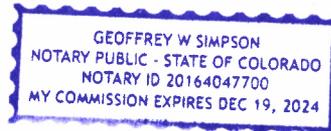
STATE OF COLORADO )  
COUNTY OF BOULDER ) ss.:

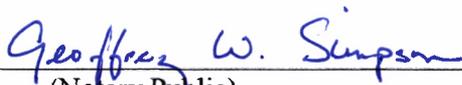
John H. Switzer, being first duly sworn, deposes and says:

1. That I am the Authorized Representative of Summit Solar Capital, LLC, the Manager of SSC Lysander LLC and that I am duly authorized on behalf of the Company to bind the Company and to execute this Project Agreement.
2. That the Company confirms and acknowledges that the owner, occupant, or operator receiving Financial Assistance for the Project is in substantial compliance with all applicable local, state and federal tax, worker protection and environmental laws, rules and regulations.

  
John H. Switzer

Subscribed and affirmed to me  
under penalties of perjury  
this 9<sup>th</sup> day of March, 2021.



  
(Notary Public)  
my Commission Expires: 12/19/2024

Signature Page to Project Agreement  
Page 2 of 2

**EXHIBIT A**

PILOT Agreement

[SEE TAB NUMBER 7 OF CLOSING TRANSCRIPT]

**EXHIBIT B**

Form of Annual Reporting Questionnaire

**Onondaga County Industrial Development Agency**

**Annual Survey of Companies  
January 2021**

**Overview:** As an agent of the Onondaga County Industrial Development Agency, \_\_\_\_\_ is required annually to document for the term of its contractual agreement with the Issuer: its employment levels, insurance coverage, payment of taxes and fees, and in some instances amount of indebtedness. To fulfill your compliance requirements, please:

1. Complete the employment and if applicable to your project, the indebtedness , sales tax and mortgage recording tax sections of the document;
2. Attach the required supporting documentation;
3. Sign and certify the document; and
4. Return to the Issuer **no later than February 28, 2022**

*Failure to comply with this request may result in an action by the Issuer to terminate or recapture the benefits granted to you. As noted in the Issuer agreement, the Issuer reserves the right to verify any information provided in this document, including an onsite inspection of the project facility or its supporting records throughout the life of the project agreement*

**I. Contact Information – please update any of the following information.**

**File Number:** \_\_\_\_\_

**Project Name:** \_\_\_\_\_

**Responsible Company Officer:** \_\_\_\_\_

**Officer Title:** \_\_\_\_\_

**Officer Phone:** \_\_\_\_\_

**Officer Fax:** \_\_\_\_\_

**Officer Email:** \_\_\_\_\_

**II. Employment Section** – Please report the number and average hourly wage rate of all full-time equivalent (FTE) employees working at the project location, including the employees of any tenants or subtenants. Also, please report the number of construction employees working on the project if applicable. The Issuer definition of the term “full-time equivalent employee” is located on the last page of this document.

Number of FTE jobs as of December 31, \_\_\_\_ \_\_\_\_\_

Average Wage of Full-time Employee \_\_\_\_\_

Number of FTE construction jobs created \_\_\_\_\_

between January 1, \_\_\_\_ – December 31, \_\_\_\_ \_\_\_\_\_

**II. Outstanding Indebtedness** – Please report the information for any Issuer authorized bonds and notes issued, outstanding or retired during the period beginning January 1, \_\_\_\_ and ending December 31, \_\_\_\_.

Current Interest Rate: \_\_\_\_\_

Outstanding Balance as of Dec. 31, \_\_\_\_\_

\_\_\_\_: \_\_\_\_\_

Principle payments during the period \_\_\_\_\_

Jan. 1, \_\_\_\_ through Dec. 31, \_\_\_\_: \_\_\_\_\_

Outstanding Balance as of Dec. 31, \_\_\_\_: \_\_\_\_\_

Final Maturity Date of the Issue: \_\_\_\_\_

Were the bonds or notes retired during the reporting period of Jan. 1, \_\_\_\_ through Dec. 31, \_\_\_\_ Yes  No

**III. Sales Tax Exemption** – Please report amount of New York State sales and use tax exemption accrued by the project during the period of January 1, \_\_\_\_ through December 31, \_\_\_\_ . This information should agree with that reported on your \_\_\_\_ NYS Tax Form ST340.

\$ \_\_\_\_\_

V. **Mortgage Recording Tax Exemption** - Please report amount of mortgage recording tax exemption accrued by project during period Jan. 1, \_\_\_\_ and ending Dec. 31, \_\_\_\_.

\$ \_\_\_\_\_

VI. **Required Attachments** – Please attach copies of the following documents.

- NYS-45-MN Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Form, filed for the quarter ending Dec. 31, \_\_\_\_.
- For companies that have made sales tax exempt purchases utilizing the sale tax exempt certificate provided to it by the Onondaga County Industrial Development Agency, a copy of NYS ST-340 Annual Statement to NYS Department of Tax and Finance of the value of all sales and use tax exemptions claimed by the Company under the authority granted by the Issuer.

VII. **Certification:** The undersigned hereby certifies the Company has complied with all provisions of its agreement with the Issuer and that the information provided to the Issuer in this annual survey is accurate and correct.

\_\_\_\_\_

Signed

\_\_\_\_\_

Date

\_\_\_\_\_

Name (Printed)

\_\_\_\_\_

Title

\_\_\_\_\_

Phone