

**SECOND AMENDED
INDUCEMENT RESOLUTION
053023-03**

At a regular meeting of the Herkimer County Industrial Development Agency held at 420 E. German Street, Herkimer, New York, on May 30, 2023 at 8:02 A.M.

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

Present: Vincent J. Bono, Cory Albrecht, Ann Gaworecki, John Scarano,
Michael Werenczak, Alana Basloe

Absent: Timothy Day

Also Present: John J. Piseck, Victoria Adams, Jennifer Young, Erin Spina, Anthony G.
Hallak

The following resolution was offered and seconded with the members voting:

AYE

NAY

All

None

RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “AGENCY”) TAKING OFFICIAL ACTION EXTENDING THE APPOINTMENT OF SUNEAST HILLS SOLAR, LLC (the “COMPANY), AND THE PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN CONNECTION WITH A SUBLEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDUCEMENT AGREEMENT AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, the Herkimer County Industrial Development Agency (the “Agency”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York Chapter 410 of the Laws of 1970 and Chapter 158 of the Laws of 1981 of the State (collectively, the “Act”) to promote, develop, encourage and assist in the constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, pollution control, commercial, research and recreation facilities for the purpose of promoting, attracting 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 (the “State”); to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to provide assistance in the construction and equipping of one or more “Projects” (as defined in the Act); and

WHEREAS, the Company presented an application (the “Application”) to the Agency on October 24, 2019, file an amended application on July 16, 2021 and subsequently filed another amended application on March 27, 2023, copies of which were presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking; (i) to provide assistance through sales tax and mortgage tax incentives for the constructing, equipping, and financing of the above described project Facility and real property tax relief in the form of a Payment in Lieu of Tax Agreement (the “Assistance”), (ii) to acquire, construct, equip, and finance the Facility or to cause the Facility to be constructed, equipped, and financed; and (iii) to lease and/or sublease (with an obligation to leaseback) or sell the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Facility will consist of the acquisition, construction, and equipping of a ground-mounted utility scale solar energy generation system on leased property totaling 200 acres located at 449 Burrell Road in the Town of Manheim with an estimated capacity of 20 MVac ± kilowatts. The Project has an estimated cost of Fifty Two Million, Six Thousand, Two Hundred Eight Nine and 00/100 Dollars (\$52,006,289.00) (the “Project Costs”); and

WHEREAS, the project proposes to generate electricity that will allow residential and commercial subscribers to benefit from renewable energy that will offset traditional power sources; and

WHEREAS, the Agency has given due consideration to the Application and to representations by the Company; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto the Department of Environmental Conservation of the State Department of Environmental Conservation of the State (collectively “SEQR”), the Agency constitutes a State Agency; and

WHEREAS, the Town of Manheim Planning Board evaluated the project and on January 27, 2020 and issued a Negative Declaration (the “SEQR Determination”) under SEQR with respect to the Project. A copy of Negative Declaration is attached hereto as Exhibit A; and

WHEREAS, the Agency has considered its environmental assessment form and related forms (the questionnaire submitted by the Company) the requisite criterion to determine whether the proposed action or the Project will have a significant effect on the environment; and

WHEREAS, if required by the Act, a public hearing will be duly noticed and had with respect to the Facility and the Assistance.

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

1. Based upon the application and other representations made by the Company to the Agency and the Agency=s due deliberation, the Agency hereby makes the following findings and determinations:

A. The Facility constitutes a “Project” within the meaning of the Act.

B. The Assistance will induce the Company to locate the Facility in the County, thereby maintaining and increasing employment opportunities within the State of New York and otherwise furthering the proposes of the Agency as set forth in the Act.

C. Except as is permitted by law, the Facility will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located in the State.

2. The form and substance of the proposed agreement in substantially the draft form presented to this meeting between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to providing of the Assistance (the “Agreement”) are hereby approved. The Chairman, Vice Chairman and Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agreement in substantially the form presented to this meeting, with such changes in terms and form as the Chairman, Vice Chairman or the Executive Director shall approve. The execution thereof by the Chairman, Vice Chairman or Executive Director shall constitute conclusive evidence of such approval.

3. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company is hereby authorized to proceed with the acquisition, construction, equipping, and financing of the Facility and to advance such funds as may be necessary to accomplish such purposes.

4. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company in accordance with the Agreement and where applicable its tenant or tenants, are appointed the true and lawful agents of the Agency (i) to acquire, construct, equip, and finance the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as the Agency could do if acting in its own behalf.

5. This Project shall not proceed until it has conformed with all requirements of SEQR, conditions (if any) imposed by the Town of Manheim Planning Board, this Agency has adopted the Negative Declaration of the Town of Manheim or County of Herkimer as Lead Agency in the SEQR process, the Company has provided adequate proof that the Project permits are duly transferable and the leases and/or subleases are approved by the Agency, and the Company has provided sufficient proof of its ability to finance the Project.

6. Pursuant to Section 875(3) of the New York General Municipal Law, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases or otherwise benefit from the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project if determined that: (i) the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, subleasee's or any other party authorized to make purchases for the benefit of the Project, fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

7. The Chairperson, Vice Chairperson, and/or Administrative Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (a) the Lease Agreement whereby the Company conveys a leasehold interest in the Project to the Agency, (b) the related Leaseback Agreement leasing the Project back to the Company, (c) the Project Benefits and Recapture Agreement, and (d) the PILOT Agreement; provided (1) the rental payments under the Leaseback Agreement include payment of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with

the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

A copy of this resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours and notices of this negative declaration shall be filed, posted and published as shall be necessary to conform with the requirements of SEQR.

8. This Resolution shall take effect immediately.

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

I, the undersigned Assistant Secretary of the Herkimer County Industrial Development Agency, do hereby certify that I have compared the foregoing extract of the minutes of the Herkimer County Industrial Development Agency (the "Agency") held on May 30, 2023 with the original thereof of file in my office, and that the same is a true and correct copy of the original and of the whole of the original insofar as the same relates to the subject matters therein referred to.

I, FURTHER CERTIFY that (i) all members of the Agency had due notice of the meeting, (ii) the meeting was in all respects duly held, (iii) pursuant to Section 99 of the Public Officers Law (Open Meetings Law), the meeting was open to the general public, and public notice of the time and place of the meeting was duly given to the public and news media in accordance with Section 99 and (iv) there was a quorum of the members of the Agency present throughout the 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 and rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 30th day of May, 2023.

**HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY**

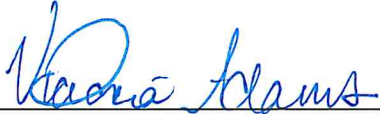
By: 
Victoria Adams, Assistant Secretary

Exhibit A

Project:
Date:

Full Environmental Assessment Form
Part 3 - Evaluation of the Magnitude and Importance of Project Impacts
and
Determination of Significance

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

Reasons Supporting This Determination:

To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact.
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

Determination of Significance - Type I and Unlisted Actions

SEQR Status:

☒ Type I☐ Unlisted

Identify portions of EAF completed for this Project:

☒ Part 1☒ Part 2☒ Part 3

FEAF 2019

Upon review of the information recorded on this EAF, as noted, plus this additional support information

Site Plan Review and documents submitted by Applicant on Environmental Issues

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the
Town of Manheim Planning Board as lead agency that:

☒ A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.

☐ B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.7(d)).

☐ C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action: SunEast Development - 449 Burrell Road

Name of Lead Agency: Town of Manheim Planning Board

Name of Responsible Officer in Lead Agency: Carl Stallman Jr.

Title of Responsible Officer: Board Chairman

Signature of Responsible Officer in Lead Agency: Carl Stallman Jr. Date: 1/27/2020

Signature of Preparer (if different from Responsible Officer) Marie Gressler Date: 1/27/2020

For Further Information:

Contact Person: Marie Gressler
Address: P.O. Box 32, Dolgeville, NY 13329
Telephone Number: 315-429-9631
E-mail: mantownclerk@cny mail.com

For Type I Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)
Other involved agencies (if any)
Applicant (if any)
Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>

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