

COUNTY OF LEWIS INDUSTRIAL
DEVELOPMENT AGENCY
P.O. Box 106
7840 State Route 26
Lowville, New York 13367

October 1, 2019

Solitude Solar, LLC d/b/a US Light Energy
830 Loudon Road
Latham, NY 12110

Re: County of Lewis Industrial Development Agency
Solitude Solar LLC d/b/a U.S. Light Energy Project - TURIN
Sales and Use Tax Exemption Letter

Dear Sir/Madam:

Pursuant to TSB-M-87(7)S issued by the New York State Department of Taxation and Finance (“DTF”) on April 1, 1987 and TSB-M-14(1.1)S issued by the DTF on February 12, 2014 (together, the “Policy Statement”), you have requested a letter from County of Lewis Industrial Development Agency (the “Agency”), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, as amended (the “Enabling Act”), and Chapter 62 of the Laws of 1973 of the State of New York, as amended, constituting Section 902-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project.

Solitude Solar, LLC, a limited liability company organized under the laws of the State of New York with offices at 830 Loudon Road, Latham, New York (the “Company”), requested that the Agency undertake and the Agency agreed to undertake a project (the “Project”) for the benefit of the Company consisting of: (A)(1) the acquisition of an interest in the Company’s fee, leasehold, and easement interests in certain parcels of land located in the Town of Turin, County of Lewis, New York (collectively, the “Land”), (2) the acquisition, construction, installation and equipping on or under the Land of: a 2.5-megawatt AC photo-voltaic community solar project to be a Community Distributed Generation Facility (collectively, 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 exemptions from sales and use taxes, mortgage recording taxes and real property taxes for the Project Facility (but not including special assessments and ad valorem levies) (collectively, the “Financial Assistance”); and (C) the lease of the Project Facility by the Company to the Agency and the sublease of the Project Facility by the Agency to the Company; all as contemplated by and in furtherance of the purposes of the Act.

The Company leased the Project Facility to the Agency pursuant to a certain lease agreement between the Company and the Agency dated as of October 1, 2019 (the "Lease Agreement"). Pursuant to a certain leaseback agreement between the Agency and the Company dated as of October 1, 2019 (the "Leaseback Agreement"), the Agency leased the Project Facility back to the Company and authorized the Company to act as agent for and on behalf of the Agency in connection with the acquisition, construction, installation and equipping of the Project Facility. This agency appointment includes the power to delegate such agency to affiliates of the Company ("Company Affiliates") and to contractors and subcontractors performing work on or making purchases for the acquisition, construction, installation and equipping of the Project Facility (each such Company Affiliate and contractor or subcontractor, an "Indirect Agent"). The Agency authorizes the Company to use and the Company shall use this letter only for the payment of costs incurred in connection with the Project.

Each contract, agreement, lease, invoice, bill or purchase order entered into by the Company or Indirect Agent, as agent for the Agency, in connection with the acquisition, construction, installation or equipping of the Project Facility, shall include language in substantially the following form:

"This contract, agreement, lease, invoice, bill or purchase order is being entered into by, or is for the benefit of, Solitude Solar, LLC, a limited liability company existing under the laws of the State of New York (the "Company"), affiliates of the Company ("Company Affiliates"), or their contractors and their subcontractors ("Indirect Agents", and together with the Company and Company Affiliates, the "Agent"), as agent for and on behalf of the County of Lewis Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency consisting generally of the acquisition, construction, installation and equipping of an up to 5 MW solar powered electric generating facility project (the "Project"). Rentals and the purchase of furnishings, trade fixtures, machinery, equipment, tools, materials, supplies, fuel, or other tangible personal property and services reasonably related to the acquisition, construction, installation and equipping of the Project which are the subject of this contract, agreement, lease, invoice, bill or purchase order shall be exempt from the sales and use taxes levied by the State of New York and the County of Lewis upon receipt by the vendor, lessor, or licensor from the Agent of a New York State Form ST-123 or Form FT-123 (as the case may be) and a New York State Form ST-60 signed by the Agency showing appointment of the Agent. This contract, agreement, lease, invoice, bill or purchase order is non-recourse to the Agency, and the Agency shall not be directly, indirectly or contingently liable or obligated hereunder in any manner or to any extent whatsoever."

Any vendor, lessor, or licensor that does not collect otherwise applicable sales or use tax in reliance upon the Form ST-123 (as defined herein) or Form FT-123 (as defined herein) issued by the Company or Indirect Agent to such vendor, lessor, or licensor, shall be deemed to have acknowledged and agreed to the foregoing language regardless of whether or not the foregoing language is inserted in the contract, agreement, lease, invoice, bill or purchase order entered into with, or for the benefit of, the Company or Indirect Agent.

Rentals and the purchases by the Company or Indirect Agent, acting as agent of the Agency, of furnishings, trade fixtures, machinery, equipment, tools, materials, supplies, fuel, or other tangible personal property and services reasonably related to the acquisition, construction, installation and equipping of the Project Facility shall be exempt from the sales and use tax levied by the State of New York and the County of Lewis, on the condition that the use of such exemption is in accordance with the terms and conditions of this Sales Tax Exemption Letter and the Leaseback Agreement.

The Agency shall not be liable, either directly or indirectly or contingently, in any manner or to any extent whatsoever, and the Company shall be the sole party liable, under any lease, sublease, license, sublicense, contract, agreement, invoice, bill or purchase order entered into by the Company or Indirect Agent, as agent for the Agency hereunder.

The exemption from sales and use taxes provided under the Leaseback Agreement is granted subject to the requirements of Section 875 of the Act, which requirements are incorporated herein by reference, and the Company agrees, and the Indirect Agents by their use of this letter agree, to such requirements as a condition precedent to receiving the exemption from sales and use taxes.

Accordingly, until the earlier of (i) December 31, 2021, (ii) the receipt by the Company of the Maximum Sales Tax Benefit (as defined in the Leaseback Agreement), or (iii) the termination of the Leaseback Agreement and/or revocation of the appointment of the Company as agent of the Agency, all vendors, lessors, and licensors are hereby authorized to rely on this letter (or on a photocopy or fax of this letter) as evidence that rentals and purchases of personal property and services, to the extent effected by the Company or Indirect Agent, as agent for the Agency, are exempt from all New York State and County of Lewis sales and use taxes.

THIS LETTER SHALL SERVE AS PROOF OF THE EXISTENCE OF AN AGENCY CONTRACT BETWEEN THE AGENCY AND THE COMPANY FOR THE SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE COMPANY IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency nor the Company is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

The Company or Indirect Agent agrees to provide a completed Form ST-123, IDA Agent or Project Operator Exempt Purchase Certificate (each, a "Form ST-123"), to each vendor, lessor, or licensor from which the Company rents or purchases personal property or services. The Company or Indirect Agent agrees to provide a completed Form FT-123, IDA Agent or Project Operator Exempt Purchase Certificate for Fuel (each, a "Form FT-123"), to each vendor, lessor, or licensor from which the Company purchases fuel (motor fuel, highway diesel motor fuel, non-highway diesel motor fuel, or residual petroleum product, as defined in Form FT-123) in connection with the Project. All vendors, lessors, or licensors are authorized to rely on such completed Form ST-123 or Form FT-123 (as the case may be) as evidence that rentals and

purchases of personal property and services, to the extent effected by the Company or Indirect Agent as agent for the Agency pursuant to the Leaseback Agreement, are exempt from all New York State and County of Lewis sales and use taxes. Pursuant to TSB-M-14(1.1)S issued by the DTF, a copy of the Form ST-123 or Form FT-123 (as the case may be) retained by any vendor, lessor, or licensor may be accepted by such vendor, lessor, or licensor as a "statement and additional documentary evidence of such exemption" as provided by New York Tax Law § 1132(c)(1), thereby relieving such vendor, lessor, or licensor from the obligation to collect sales and use tax with respect to the acquisition, construction, installation and equipping of the Project Facility.

The Company agrees to comply with the requirements of the General Municipal Law and the Public Authorities Law requiring an agent/project operator of an Industrial Development Agency to file with the New York State Tax Department an "Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)" being Form ST-340.


By the Company's acceptance of the terms of this letter, and by any Indirect Agent's use of this letter, the Company and any Indirect Agent agree to accept the terms hereof and represent and warrant to the Agency that the use of this letter by the Company or any Indirect Agent is and will be strictly for the purposes above stated.

In the event you have any questions with respect to the above, please do not hesitate to call the Executive Director of the Agency at (315) 376-3014.

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

Very truly yours,

COUNTY OF LEWIS INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Eric J. Virkler
Title: Executive Director

Accepted and agreed:

SOLITUDE SOLAR, LLC

BY: 
Mark Richardson