

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY  
(TOWN OF BROOKHAVEN, NEW YORK)

and

PENNYSAVER SOLAR, LLC

and

C2 NY BROOKHAVEN, LLC

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ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT

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Dated September 18, 2019

Town of Brookhaven Industrial Development Agency  
(Assignment of Pennysaver Solar, LLC 2019 Facility)

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## ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT

THIS ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT, dated September 18, 2019 (this “**Assignment, Assumption and Amendment Agreement**”), is by and among the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly organized and existing under the laws of the State of New York, having its principal office at 1 Independence Hill, 2nd Floor, Farmingville, New York 11738 (the “**Agency**”), PENNYSAYER SOLAR, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having its principal office at 6735 Conroy Windermere Road, Suite 401, Orlando, Florida 32835 (the “**Assignor**” and the “**Original Company**”), and C2 NY BROOKHAVEN, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having its principal office at 55 Fifth Avenue, 18<sup>th</sup> Floor, New York, New York 10003 (the “**Assignee**” and the “**Company**”).

### RECITAL

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

WHEREAS, the aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State;

WHEREAS, the aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, civic, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living;

WHEREAS, pursuant to and in accordance with the provisions of the aforesaid act and Chapter 358 of the Laws of 1970 of the State of New York, as amended (collectively, the “**Act**”), the Agency was created and is empowered to undertake the providing of financing and leasing of the Facility defined below;

WHEREAS, the Agency has previously provided its assistance to the Assignor in the acquisition of a long term ground leasehold interest in an approximately 6.4 acre portion of an approximately 70.0 acre parcel of land located at the parking lot of the Pennysaver Amphitheater, 55 Bicycle Path, Farmingville, New York 11738 (more particularly described as Suffolk County Tax Map No. 0200-571.00-03.00-040.000 and 0200-572.00-01.00-001.000) (the “**Land**”), owned by the Town of Brookhaven (the “**Town**”), and the construction of an approximately 2,336.34 kW (2.33634 MW) DC solar photovoltaic electric

generating carport facility thereon (the **"Improvements"**), and the equipping thereof, including, but not limited to, approximately eighteen (18) steel carport canopies, approximately 6,772 345W solar photovoltaic panels, approximately five (5) 500 kW inverters, transformer stations, switch gear equipment and other electrical equipment (collectively, the **"Equipment"**); and together with the Land and the Improvements, the **"Facility"**), which Facility is used by the Original Company to provide solar-generated energy to the residents of the Town (collectively, the **"Project"**); and

WHEREAS, the Agency previously acquired a subleasehold interest in the Land and a leasehold interest in the Improvements pursuant to a certain Company Lease Agreement, dated as of April 1, 2019 (the **"Original Company Lease"**), by and between the Original Company and the Agency and a memorandum of such Original Company Lease was recorded in the Suffolk County Clerk's office on April 17, 2019 in Liber 13008 of Deeds, Page 622; and

WHEREAS, the Agency previously acquired title to the Equipment pursuant to a certain Bill of Sale, dated April 16, 2019 (the **"Bill of Sale"**), from the Original Company to the Agency; and

WHEREAS, the Agency sub-subleased the Land, subleased the Improvements and leased the Equipment to the Original Company pursuant to a certain Lease and Project Agreement, dated as of April 1, 2019 (the **"Original Lease Agreement"**), by and between the Agency and the Original Company and a memorandum of such Original Lease Agreement was recorded in the Suffolk County Clerk's office on April 17, 2019 in Liber 13008 of Deeds, Page 623; and

WHEREAS, the Assignee has now requested the Agency's consent to (i) the assignment by the Assignor of all of its rights, title, interest and obligations under the Original Company Lease and the Original Lease Agreement, and certain other agreements in connection with the Facility to the Assignee and the assumption by the Assignee of all of such rights, title, interest and obligations of the Assignor, and (ii) the release of the Assignor from any further liability with respect to the Facility subject to certain requirements of the Agency, all pursuant to this Assignment, Assumption and Amendment Agreement on the terms set forth herein; and

WHEREAS, the Original Company Lease shall be assigned by the Assignor to the Assignee and assumed by the Assignee pursuant to a certain Assignment and Assumption of Company Lease, dated September 18, 2019 (the **"Assignment of Company Lease"**), by and between the Assignor and the Assignee, and consented to by the Agency; and

WHEREAS, the Original Lease Agreement shall be assigned by the Assignor to the Assignee and assumed by the Assignee pursuant to a certain Assignment and Assumption of Lease Agreement, dated September 18, 2019 (the **"Assignment of Lease Agreement"**), by and between the Assignor and the Assignee, and consented to by the Agency; and

WHEREAS, pursuant to this Assignment, Assumption and Amendment Agreement, the Original Company Lease shall be amended to reflect that the Assignee will assume all of

the right, title, interest, liability, duty and obligations of the Assignor arising on and after the Effective Date (as hereinafter defined) with respect to the Facility under the Original Company Lease (as assigned by the Assignment of Company Lease and amended by this Assignment, Assumption and Amendment Agreement, the "**Company Lease**") including but not limited to, all of the right, title, interest, liability, duty and obligations of the Assignor arising on and after the Effective Date; and

WHEREAS, pursuant to this Assignment, Assumption and Amendment Agreement, the Original Lease Agreement shall be amended to reflect that the Assignee will assume all of the right, title, interest, liability, duty and obligations of the Assignor arising on and after the Effective Date (as hereinafter defined) with respect to the Facility under the Original Lease Agreement (as assigned by the Assignment of Lease Agreement and amended by this Assignment, Assumption and Amendment Agreement, the "**Lease Agreement**") including but not limited to, all of the right, title, interest, liability, duty and obligations of the Assignor arising on and after the Effective Date; and

WHEREAS, subject to the Agency's consent, which consent is given pursuant to Section 3.2 hereof, the Assignee shall assume the Assignor's leasehold estate and reversionary interest in the Facility created pursuant to the Original Lease Agreement, and assume all of the right, title, interest, liability, duty and obligations of the Assignor with respect to the Facility including but not limited to, all of the right, title, interest, liability, duty and obligations of the Assignor under the Original Lease Agreement and the Original Company Lease, in each case, arising on and after the Effective Date; and

WHEREAS, the Assignee has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the assignment of the interest in the Facility from the Assignor to the Assignee, the financing of the Facility and the subsequent sale of the Facility to the Assignee.

## AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

### ARTICLE I DEFINITIONS

All capitalized terms used in this Assignment, Assumption and Amendment Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached to the Lease Agreement as Schedule A and made a part hereof.

All references in the Company Lease, or the Lease Agreement to "this Company Lease" or "the "Company Lease", "this Lease Agreement", or "the Lease Agreement", or words of similar import, and the terms "hereby", "hereof", "hereto", "herein", "hereunder", "thereby", "thereof", "thereto", "therein", "thereunder" and any similar terms as used in any such instrument or agreement shall be deemed to refer to such instrument or agreement as amended, modified, supplemented and assigned by this Assignment, Assumption and

Amendment Agreement.

ARTICLE II  
REPRESENTATIONS AND COVENANTS OF ASSIGNOR AND ASSIGNEE

Section 2.1 Representation and Covenants of Assignor.

(a) The Assignor is a limited liability company, organized and existing under the laws of the State of Delaware and authorized to transact business in the State of New York, is in good standing under the laws of the State of New York and the State of Delaware, and has full legal right, power and authority to execute, deliver and perform each of the Assignor Documents and the other documents contemplated thereby. Each of the Assignor Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Assignor.

(b) Each of the Assignor Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Assignor enforceable against the Assignor in accordance with its terms.

Section 2.2 Representation and Covenants of Assignee.

(a) The Assignee is a limited liability company, organized and existing under the laws of the State of Delaware and is authorized to transact business in the State of New York, is in good standing under the laws of the State of Delaware and the State of New York, and has full legal right, power and authority to execute, deliver and perform each of the Assignee Documents and the other documents contemplated thereby. Each of the Assignee Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Assignee.

(b) Neither the execution and delivery of any of the Assignee Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Assignee Documents and the other documents contemplated thereby will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof, the Assignee's Articles of Organization or Operating Agreement, as amended, or any restriction or any agreement or instrument to which the Assignee is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Assignee under the terms of any such law, ordinance, Articles of Organization or Operating Agreement, as amended, restriction, agreement or instrument, except for Permitted Encumbrances.

(c) Each of the Assignee Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Assignee enforceable against the Assignee in accordance with its terms.

(d) The Facility is and will continue to be a "project" as such quoted term is defined in the Act. The Assignee will not take any action, or fail to take any action, which

action or failure to act would cause the Facility not to constitute a “project” as such quoted term is defined in the Act.

ARTICLE III  
ASSIGNMENT, ASSUMPTION AND AMENDMENT

Section 3.1 Effective Date, Assignment, Assumption and Amendment, Agency Certification, Consents.

(a) As used herein, the “Effective Date” shall mean September 18, 2019.

(b) Upon the Effective Date the Assignor hereby assigns to the Assignee all of its rights, title, interest, obligations, liabilities and duties (including its reversionary rights under the Original Lease Agreement) under the Original Lease Agreement and the Original Company Lease (provided that with respect to any obligations, liabilities and duties, such assignment shall relate only to obligations, liabilities and duties arising on or after the Effective Date).

(c) On and after the Effective Date the Assignee hereby assumes all of the Assignor’s rights, title, interest, obligations, liabilities and duties relating to the Facility arising on and after the Effective Date, including, but not limited to, all of its rights, title, interest, obligations, liabilities and duties (provided that with respect to any obligations, liabilities and duties, such assumption shall relate only to obligations, liabilities and duties arising on or after the Effective Date) under the Original Company Lease and the Original Lease Agreement.

(d) The Agency, the Assignor and the Assignee acknowledge that the Assignment of Company Lease and the Assignment of Lease Agreement, will be executed by the Agency, the Assignor and the Assignee and delivered to the Suffolk County Clerk’s office to effectuate the assignment and assumption of the Original Company Lease and the Original Lease Agreement.

Section 3.2 Consent by Agency. The Agency hereby consents to the assignment by the Assignor to the Assignee pursuant to Section 3.1(b) above and the assumption by the Assignee pursuant to Section 3.1(c) above, and otherwise subject to the terms, conditions and limitations described herein.

Section 3.3 Certification of Agency. The Agency hereby certifies to Assignee that to the best of its knowledge, the Assignor is not in default under the Agency Documents, and that there are no unpaid but due sums by Assignor under the Agency Documents.

ARTICLE IV  
RELEASE

Section 4.1 Release of the Assignor by the Agency.

(a) On and after the Effective Date, but only upon receipt of an opinion of counsel to the Assignee that this Assignment, Assumption and Amendment Agreement is

duly authorized, executed and delivered by the Assignee, the receipt of which is hereby confirmed, the Agency hereby releases the Assignor from all of its obligations, liabilities and duties relating to the Facility, including, but not limited to, all of its rights, title, interest, obligation, liabilities and duties under the Original Company Lease and the Original Lease Agreement.

(b) Notwithstanding anything herein to the contrary, Assignor is hereby not released from its obligations, liabilities or duties under the Original Lease Agreement arising prior to the Effective Date (the “**Prior Obligations**”), including, without limiting the generality of the foregoing, the obligations of the Assignor to indemnify and defend the Agency and to hold harmless the Agency under the Original Lease Agreement, irrespective of whether a particular cause of action in connection with such Prior Obligations was commenced or commences before or after the Effective Date.

## ARTICLE V INDEMNIFICATION

Section 5.1 Assignee’s Indemnification of Agency and Assignor. The Assignee shall and does indemnify the Agency and the Assignor against, and agrees to defend and hold the Agency and the Assignor harmless from, all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred in connection with the Company Lease and the Lease Agreement, first arising on and after the Effective Date except Prior Obligations. In addition, the Assignee shall and does indemnify the Agency, and agrees to defend and hold the Agency harmless from any of the Assignee’s obligations to indemnify and hold harmless the Agency under Section 8.2 of the Lease Agreement, first arising on and after the Effective Date except Prior Obligations.

Section 5.2 Assignor’s Indemnification of Agency. The Assignor shall and does indemnify the Agency and the Assignee against, and agrees to defend and hold the Agency and the Assignee harmless from, all liabilities, obligations, actions, suits, proceedings or claims and all costs and expenses (including, without limitation, reasonable attorneys’ fees) incurred in connection with the Original Company Lease and the Original Lease Agreement, arising prior to the Effective Date, in addition to any other Prior Obligations.

## ARTICLE VI AMENDMENT AND MODIFICATION

Section 6.1 Amendment and Modification of Company Lease. The Assignee and the Agency agree that the Company Lease is amended and modified as of the Effective Date as follows:

(a) The Company Lease is hereby amended and modified in all respects to reflect that the Assignee is now leasing the Facility to the Agency as defined herein. Accordingly, all references in the Company Lease Agreement to the “Company” are hereby amended and modified to reflect the following definition:



“Company” means C2 NY Brookhaven, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, and its successors and assigns

Section 6.2 Amendment and Modification of Lease Agreement. The Assignee and the Agency agree that the Lease Agreement is amended and modified as of the Effective Date as follows:

(a) The Lease Agreement is hereby amended and modified in all respects to reflect that the Agency is now subleasing the Facility to the Assignee as defined herein. Accordingly, all references in the Lease Agreement to the “Company” are hereby amended and modified to reflect the following definition:

“Company” means C2 NY Brookhaven, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, and its successors and assigns.

## ARTICLE VII MISCELLANEOUS

Section 7.1 Notices. All notices, certificates and other communications hereunder shall be either delivered personally or sent by certified mail, return receipt requested, or delivered by any national overnight express delivery service (in each case, postage or delivery charges paid by the party giving such communication), addressed as follows or to such other address as any party may specify in writing to the others:

To the Agency:

Town of Brookhaven Industrial Development Agency  
1 Independence Hill, 2nd Floor  
Farmingville, New York 11738  
Attention: Chief Executive Officer

To the Assignee:

C2 NY Brookhaven, LLC  
55 Fifth Avenue, 18<sup>th</sup> Floor  
New York, New York 10003  
Attention: Richard Dovero, Managing Member

Notice by mail shall be effective when delivered but if not yet delivered shall be deemed effective at 12:00 p.m. on the Third Business Day after mailing with respect to certified mail and one Business Day after mailing with respect to overnight mail.

Section 7.2 Binding Effect. This Assignment, Assumption and Amendment Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 7.3 Severability. In the event any provision of this Assignment, Assumption and Amendment Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 7.4 Amendments, Changes and Modifications. This Assignment, Assumption and Amendment Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto.

Section 7.5 Execution of Counterparts. This Assignment, Assumption and Amendment Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 7.6 Applicable Law. This Assignment, Assumption and Amendment Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflict of laws principles.

Section 7.7 Section Headings Not Controlling. The headings of the several Sections in this Assignment, Assumption and Amendment Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Assignment, Assumption and Amendment Agreement.

Section 7.8 Ratification of Documents. Except as otherwise amended and modified by this Assignment, Assumption and Amendment Agreement, the Lease Agreement and the Company Lease described herein are hereby ratified and confirmed and remain in full force and effect.

(Remainder of Page Intentionally Left Blank – Signature Pages Follow)

IN WITNESS WHEREOF, the Agency, the Assignor and the Assignee have caused this Assignment, Assumption and Amendment Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

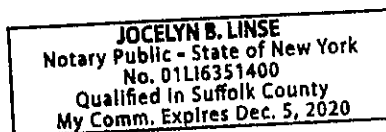
**TOWN OF BROOKHAVEN  
INDUSTRIAL DEVELOPMENT  
AGENCY**

By: *Lisa MG Mulligan*  
Name: Lisa MG Mulligan  
Title: Chief Executive Officer


STATE OF NEW YORK    )  
                                  : SS.:  
COUNTY OF SUFFOLK    )

On the 30<sup>th</sup> day of August in the year 2019, before me, the undersigned, personally appeared **Lisa MG Mulligan**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

*Joelyn B. Linse*  
Notary Public



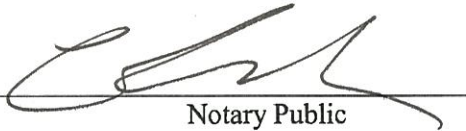
**PENNYSAVER SOLAR, LLC**

By:   
Name: Daniel Prokopy  
Title: Member

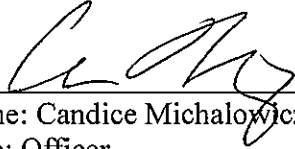
STATE OF NEW YORK    )  
  : SS.:  
COUNTY OF NEW YORK )

On the 29 day of August in the year 2019, before me, the undersigned, personally appeared **Daniel Prokopy**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

CAROLYN L MILLER  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02MI6390498  
Qualified in Kings County  
My Commission Expires 04-15-2023

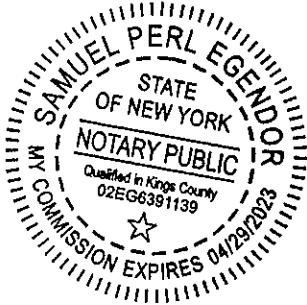
  
Notary Public

C2 NY BROOKHAVEN, LLC

By:   
Name: Candice Michalowicz  
Title: Officer

STATE OF NEW YORK     )  
  : SS.:  
COUNTY OF                     )

On the 29 day of August in the year 2019, before me, the undersigned, personally appeared **Candice Michalowicz**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



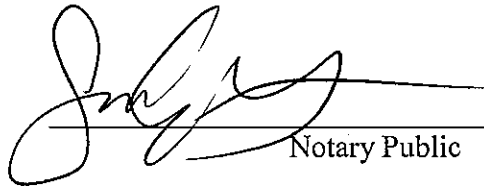
  
Notary Public

EXHIBIT A

Legal Description of Real Property

BEGINNING AT THE SOUTHWESTERLY CORNER OF THE PROPERTY TO BE DESCRIBED, SAID PROPERTY BEING PART OF SUFFOLK COUNTY TAX MAP PARCELS DISTRICT 0200 SECTION 571 BLOCK 03 LOT 40 AND DISTRICT 0200 SECTION 572 BLOCK 01 LOT 01, SAID POINT BEING DISTANT THE FOLLOWING SIX (6) COURSES AND DISTANCES FROM THE CORNER FORMED BY THE EASTERLY SIDE OF ADIRONDACK DRIVE AND THE NORTHERLY SIDE OF EDGEWOOD AVENUE;

- 1) EASTERLY, 622.73 FEET ALONG THE NORTHERLY SIDE OF EDGEWOOD AVENUE;
- 2) NORTH 06 DEGREES 13 MINUTES 10 SECONDS EAST, 121.29 FEET;
- 3) NORTH 83 DEGREES 46 MINUTES 50 SECONDS EAST, 61.89 FEET;
- 4) NORTH 14 DEGREES 14 MINUTES 30 SECONDS EAST, 1,618.87 FEET;
- 5) NORTH 59 DEGREES 14 MINUTES 30 SECONDS EAST, 205.73 FEET;
- 6) THENCE NORTH 09 DEGREES 45 MINUTES 16 SECONDS EAST, 320.75 FEET TO THE POINT OF BEGINNING;

RUNNING THENCE NORTH 02 DEGREES 19 MINUTES 43 SECONDS WEST 637.36 FEET;

THENCE NORTH 87 DEGREES 40 MINUTES 17 SECONDS EAST, 328.67 FEET;

THENCE SOUTH 02 DEGREES 33 MINUTES 54 SECONDS EAST, 345.00 FEET GENERALLY ALONG THE EDGE OF PAVEMENT;

THENCE NORTH 87 DEGREES 40 MINUTES 17 SECONDS EAST, 20.00 FEET;

THENCE SOUTH 02 DEGREES 19 MINUTES 43 SECONDS EAST, 40.00 FEET;

THENCE SOUTH 87 DEGREES 40 MINUTES 17 SECONDS WEST, 20.05 FEET;

THENCE SOUTH 01 DEGREES 49 MINUTES 10 SECONDS EAST, 252.36 FEET GENERALLY ALONG THE EDGE OF PAVEMENT;

THENCE SOUTH 87 DEGREES 40 MINUTES 17 SECONDS WEST, 327.80 FEET TO THE POINT OR PLACE OF BEGINNING.

CONTAINING 4.8357 ACRES, MORE OR LESS.