
COUNTY OF CATTARAUGUS INDUSTRIAL DEVELOPMENT AGENCY

AND

HOMERIDAE LLC

FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

DATED AS OF APRIL 1, 2019

RELATING TO THE PREMISES LOCATED AT 231 AND 251 HOMER
STREET (TAX ID # 94.032-1-2.11 AND 94.032-1-2.12) IN THE CITY OF
OLEAN, CATTARAUGUS COUNTY, NEW YORK.

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only and is not part of the First Amendment to
Payment in Lieu of Tax Agreement)

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FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT

THIS FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT dated as of April 1, 2019 by and between HOMERIDAE LLC, a limited liability company organized and existing under the laws of the State of New York (the "State") having an office for the transaction of business located at 400 Market Industrial Park, Suite 32, Wappingers Falls, New York (the "Company") and COUNTY OF CATTARAUGUS 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 located at 9 East Washington Street, Ellicottville, New York (the "Agency");

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (as amended, 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, among others, 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 Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 536 of the Laws of 1971 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, on February 26, 2018, (the "Closing"), the Agency granted certain financial assistance to Homeridae LLC (the "Company") in connection with a project (the "Project"), said Project consisting of the following: (A) (1) the acquisition of an interest in a portion of an approximately 17 acre parcel of land located at 231 and 251 Homer Street (Tax ID # 94.032-1-2.11 and 94.032-1-2.12) in the City of Olean, Cattaraugus County, New York (collectively, the "Land"), (2) the construction on the Land of a 3.2MW AC solar photovoltaic facility (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 hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute a solar farm and other directly and indirectly related activities; (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 and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to a lease agreement dated as of February 1, 2018 (the "Lease Agreement") by and between the Agency and the Company; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of February 1, 2018 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter

located on said portion of the Land (collectively, the "Leased Premises") and (2) a bill of sale dated as of February 1, 2018 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment; (B) the Company and the Agency executed and delivered (1) a payment in lieu of tax agreement dated as of February 1, 2018 (the "Original Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes and (3) a certain uniform project benefits agreement dated as of February 1, 2018 (the "Uniform Project Benefits Agreement") relating to the granting of the Financial Assistance by the Agency to the Company; (C) the Agency filed with the assessor and mailed to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the "Real Property Tax Exemption Form") relating to the Project Facility and the Payment in Lieu of Tax Agreement; (D) the Agency executed and delivered to the Company a sales tax exemption letter (the "Sales Tax Exemption Letter") to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance; and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") (the above enumerated documents being collectively referred to as the "Closing Documents"); and

WHEREAS, the Company has made a request to the Agency (the "Pilot Request"), that the Agency amend the Original Payment in Lieu of Tax Agreement pursuant to an amendment to payment in lieu of tax agreement (the "First Amendment to Payment in Lieu of Tax Agreement") by and between the Agency and the Company to allow the first payment due date be changed from January 1, 2019 to January 1, 2020, as the Project is still under construction; and

WHEREAS, by resolution adopted by the members of the Agency on February 7, 2019 (the "Resolution Authorizing Amendment to Pilot Agreement"), the Agency approved the Pilot Request and further determined to enter into this First Amendment to Payment in Lieu of Tax Agreement; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the "SEQR Act") and the regulations (the "Regulations") adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, "SEQRA"), the Agency determined, pursuant to the Resolution Authorizing Amendment to Pilot Agreement, that the Amendment constituted a "Type II action" pursuant to 6 NYCRR 617.5(20), (23) and (26), and therefor that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Amendment; and

WHEREAS, the Agency and the Company now desire to enter into this First Amendment to Payment in Lieu of Tax Agreement to amend the Original Payment in Lieu of Tax Agreement;

NOW, THEREFORE, for good and valuable consideration, the parties hereto agree as follows:

SECTION 1. DEFINITIONS. (A) Except as provided in subsection (B) below, unless the context or use indicates another or different meaning, initially capitalized terms used in this First Amendment to Payment in Lieu of Tax Agreement, including any instrument delivered pursuant hereto and in the recitals and granting clauses hereof, shall have the respective meanings specified in the Original Payment in Lieu of Tax Agreement. Any term defined in both this First Amendment to Payment in Lieu of Tax Agreement

and in the Original Payment in Lieu of Tax Agreement shall have the meaning specified in this First Amendment to Payment in Lieu of Tax Agreement.

(B) The following definitions are equally applicable to both the singular and plural forms of any of the terms herein defined. As used in the Original Payment in Lieu of Tax Agreement and herein:

“First Amendment to Payment in Lieu of Tax Agreement” shall mean the first amendment to payment in lieu of tax agreement dated as of April 1, 2019 by and between the Agency and the Company, providing for certain amendments to the Original Payment in Lieu of Tax Agreement.

“Original Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of February 1, 2018 by and between the Agency and the Company.

“Payment in Lieu of Tax Agreement” means the Original Payment in Lieu of Tax Agreement, as amended by the First Amendment to Payment in Lieu of Tax Agreement.

SECTION 2. REPRESENTATIONS BY AGENCY. The Agency represents that (A) the Agency has the power under the Act to enter into the transactions contemplated by this First Amendment to Payment in Lieu of Tax Agreement and (B) the Agency has duly authorized the execution, delivery and performance of this First Amendment to Payment in Lieu of Tax Agreement.

SECTION 3. REPRESENTATIONS BY COMPANY. The Company represents that (A) the Company has the legal authority to enter into the transactions contemplated by this First Amendment to Payment in Lieu of Tax Agreement and (B) the Company has authorized the execution, delivery and performance of this First Amendment to Payment in Lieu of Tax Agreement.

SECTION 4. AMENDMENTS TO ORIGINAL PAYMENT IN LIEU OF TAX AGREEMENT. The Original Payment in Lieu of Tax Agreement is hereby amended as follows:

(A) Definitions. The Original Payment in Lieu of Tax Agreement is hereby amended so that the following words and terms shall have the respective meanings ascribed thereto in Section 1 of this First Amendment to Payment in Lieu of Tax Agreement: “Original Payment in Lieu of Tax Agreement”, “Payment in Lieu of Tax Agreement” and “First Amendment to Payment in Lieu of Tax Agreement”.

(B) Section 2.02(B)(2) of the Original Payment in Lieu of Tax Agreement is hereby amended to read as follows:

“(2) During the first fifteen years that payments in lieu of taxes are due pursuant to the terms of this Payment in Lieu of Tax Agreement, each annual Guaranteed Payment in Lieu of Taxes will be payable on January 1 of each year (commencing on January 1, 2020), subject to the thirty (30) day grace period described in Section 2.02(H) hereof, and shall upon receipt shall be distributed to the Taxing Entities in accordance with a formula based on the tax rates of the Taxing Entities in effect as of the date of execution of this Payment in Lieu of Tax Agreement.”

SECTION 5. PROVISIONS OF FIRST AMENDMENT TO PAYMENT IN LIEU OF TAX AGREEMENT CONSTRUED WITH ORIGINAL PAYMENT IN LIEU OF TAX AGREEMENT. All of the covenants, agreements and provisions of this First Amendment to Payment in Lieu of Tax Agreement shall be deemed to be and construed as part of the Original Payment in Lieu of Tax Agreement and vice versa to the same extent as if fully set forth verbatim therein and herein. In the event of any variation or inconsistency between any covenant, agreement or provision contained in this First

Amendment to Payment in Lieu of Tax Agreement and any covenant, agreement or provision contained in the Original Payment in Lieu of Tax Agreement, the covenant, agreement or provision contained herein shall govern.

SECTION 6. ORIGINAL PAYMENT IN LIEU OF TAX AGREEMENT AS AMENDED TO REMAIN IN EFFECT. Except as amended by this First Amendment to Payment in Lieu of Tax Agreement, the Original Payment in Lieu of Tax Agreement shall remain in full force and effect and the terms and conditions thereof are hereby confirmed.

SECTION 7. EXECUTION OF COUNTERPARTS. This First Amendment to Payment in Lieu of Tax 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.

IN WITNESS WHEREOF, the parties have caused this First Amendment to Payment in Lieu of Tax Agreement to be duly executed as of the day and date first above written.

COUNTY OF CATTARAUGUS
INDUSTRIAL DEVELOPMENT AGENCY

BY: 
(Vice) Chairman

HOMERIDAE LLC

By: BQ Energy, LLC, its Managing Member

BY: _____
Paul F. Curran, Managing Director

IN WITNESS WHEREOF, the parties have caused this First Amendment to Payment in Lieu of Tax Agreement to be duly executed as of the day and date first above written.

COUNTY OF CATTARAUGUS
INDUSTRIAL DEVELOPMENT AGENCY

BY: _____
(Vice) Chairman

HOMERIDAE LLC

By: BQ Energy, LLC, its Managing Member

BY:  _____
Paul F. Curran, Managing Director

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

On the 16 day of April, 2019 before me, the undersigned, personally appeared Joseph E. Higgins, 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 upon behalf of which the individual acted, executed the instrument.


Notary Public

SANDRA K. ANDREWS
NO. 01AN6087856
Notary Public State of New York
Qualified in Cattaraugus County
My Commission Expires 2/24/2023

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

On the 11th day of April, in the year 2019, before me, the undersigned, personally appeared PAUL F. CURRAN, 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/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Alicia Scott
Notary Public



**NYS DEPARTMENT OF TAXATION & FINANCE
OFFICE OF REAL PROPERTY TAX SERVICES**

RP-412-a (1/95)

**INDUSTRIAL DEVELOPMENT AGENCIES
APPLICATION FOR REAL PROPERTY TAX EXEMPTION**
(Real Property Tax Law, Section 412-a and General Municipal Law, Section 874)

1. INDUSTRIAL DEVELOPMENT AGENCY (IDA)

Name County of Cattaraugus IDA
Street 9 Washington Street
City Ellicottville, New York 14731
Telephone no. Day (716) 699-2005
Evening () _____
Contact Corey R. Wiktor
Title Executive Director

2. OCCUPANT (IF OTHER THAN IDA)

(If more than one occupant attach separate listing)

Name Homeridae LLC
Street 47 South Hamilton Street
City Poughkeepsie, New York 12601
Telephone no. Day () _____
Evening () _____
Contact Paul F. Curran
Title Manager

3. DESCRIPTION OF PARCEL

- a. Assessment roll description (tax map no./roll year) 94.032-1-2.11
- b. Street address 231 and 251 Homer Street
- c. City, Town or Village Olean
- d. School District Olean Central School District
- e. County Cattaraugus
- f. Current assessment _____
- g. Deed to IDA (date recorded; liber and page) _____

4. GENERAL DESCRIPTION OF PROPERTY (if necessary, attach plans or specifications)

- a. Brief description (include property use) Solar Farm
- b. Type of construction Construction on land of a 3.2M AC Solar Photovoltaic Facility
- c. Square footage _____
- d. Total cost _____
- e. Date construction commenced _____
- f. Projected expiration of exemption (i.e. date when property is no longer possessed, controlled, supervised or under the jurisdiction of IDA) December 31, 2034

5. SUMMARIZE AGREEMENT (IF ANY) AND METHOD TO BE USED FOR PAYMENTS TO BE MADE TO MUNICIPALITY REGARDLESS OF STATUTORY EXEMPTION

(Attach copy of the agreement or extract of the terms relating to the project).

- a. Formula for payment Pursuant to the attached First Amendment to Payment in Lieu of Tax Agreement
- b. Projected expiration date of agreement December 31, 2034

c. Municipal corporations to which payments will be made

	Yes	No
County <u>Cattaraugus</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Town/City <u>Olean</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Village _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
School District <u>Olean CSD</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

d. Person or entity responsible for payment

Name Homeridae LLC
 Title _____
 Address 47 South Hamilton Street
Poughkeepsie, New York 12601

e. Is the IDA the owner of the property? ☐ Yes ☒ No (check one)

If "No" identify owner and explain IDA rights or interest in an attached statement.

Telephone _____

6. Is the property receiving or has the property ever received any other exemption from real property taxation? (check one) ☐ Yes ☐ No

If yes, list the statutory exemption reference and assessment roll year on which granted:
 exemption _____ assessment roll year _____

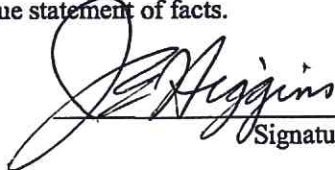
7. A copy of this application, including all attachments, has been mailed or delivered on _____ (date) to the chief executive official of each municipality within which the project is located as indicated in Item 3.

CERTIFICATION

I, Joseph E. Higgins, (Vice) Chairman _____ of
 Name Title
County of Cattaraugus Industrial Development Agency hereby certify that the information
 Organization

on this application and accompanying papers constitutes a true statement of facts.

6/17 /2019
 Date


 Signature

FOR USE BY ASSESSOR

1. Date application filed _____
2. Applicable taxable status date _____
- 3a. Agreement (or extract) date _____
- 3b. Projected exemption expiration (year) _____
4. Assessed valuation of parcel in first year of exemption \$ _____
5. Special assessments and special as valorem levies for which the parcel is liable:

 Date

 Assessor's signature

RP-412-a Attachment

5. e. The IDA has a leasehold interest in the property pursuant to a lease to agency dated as of February 1, 2018 (the "Lease to Agency") from the Company to the IDA, as modified pursuant to a modification agreement dated as of April 1, 2019 (the "Modification Agreement") by and between the IDA and the Company.