

ORDINANCE NO. _____

**PRE-ANNEXATION AGREEMENT BY AND BETWEEN
THE TOWN OF CORTLAND AND
TPE IL DE425, LLC**

This Pre-Annexation Agreement (hereinafter the “Agreement”) is made and entered into this ____ day of _____, 20__ (the “Effective Date”), by and between the **TOWN OF CORTLAND**, an Illinois municipal corporation (the “Town”) and **TPE IL DE425, LLC**, a Delaware limited liability company (the “Developer”). Developer and the Town are collectively referred to herein as the “Parties.”

WHEREAS, Developer is the lessor of certain real property on parcel 09-27-400-005 (hereinafter the “Property”), comprising approximately 44 acres, as more fully described in Exhibit A attached hereto and made a part hereof, which is not presently contiguous to the Town’s corporate limits;

WHEREAS, Developer intends to develop a solar energy generation facility on the Property (the “Solar Project”);

WHEREAS, the Parties hereto desire that the Property be annexed to the Town on the terms and conditions set forth in this Agreement;

WHEREAS, on _____, 20__, notice having been properly given, the Town Board of the Town did consider this Agreement at a public hearing;

WHEREAS, the Mayor and the Town Board have determined that it is the best interest of the Town to enter into the Agreement with Developer to permit the sound planning and development of the Town and to otherwise enhance and promote the health, safety and general welfare of the Town; and

WHEREAS, by means of this Agreement and pursuant to the provisions of Chapter 65, Illinois Compiled Statutes, Section 5/11-15.1-1, *et seq.*, the Parties intend to set forth the terms and conditions by which the Property will be annexed to the Town.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, the Parties hereto agree as follows:

1. Recitals. The foregoing Recitals are incorporated herein as though fully set forth herein.
2. Annexation. Pursuant to the applicable provisions of state law, the Town agrees to cause the Property to be fully and validly annexed to the Town as promptly as practicable after execution of this Agreement when (i) the Property becomes contiguous to the Town, and (ii) Developer has filed a petition for annexation with the Town. After this Agreement is executed,

and as soon as the Property becomes contiguous to the Town, Developer agrees to petition the Town for annexation in accordance with the provisions of the Illinois Municipal Code.

3. Legal conformation with law. This Agreement is made pursuant to, and in accordance with, the provisions of the Town Zoning Regulations and with the applicable provisions of the Illinois Compiled Statutes and the Illinois Constitution.

4. Rezoning. Upon annexation, the Property shall cease being zoned “A-1” by DeKalb County, Illinois and shall commence being zoned by the Town as “AG Agriculture.” After this Agreement is signed, the Property becomes contiguous to the Town, and Developer files a petition for annexation with the Town, the present use of this Property shall be permitted to continue, and the Town agrees to designate this Property as “AG Agricultural” upon annexation unless Developer requests a different zoning classification.

5. Ordinance applicable. Developer agrees that all ordinances of the Town shall apply to the Property to the extent allowed by law, except as follows:

a. The equipment height requirements in Title 9, Chapter 4, Section 9-4-34(B)(1)(e) of the Town Zoning Regulations shall not apply to the Solar Project.

b. The Solar Project shall adhere to the following replacement requirement with respect to equipment height: All equipment for a ground or pole mounted solar energy system shall not exceed fifteen feet (15') in height as measured when the system is oriented at its maximum tilt, excluding any and all poles owned by Commonwealth Edison (“ComEd”).

c. Commencing on the Solar Project’s commercial operations date and terminating upon completion of the Solar Project’s decommissioning, Developer shall pay the applicable tax rate to the applicable Cortland TIF district, the Town of Cortland, the Cortland Fire Department, and the Cortland Community Library. Developer shall provide written notice to the Town of the Solar Project’s commercial operations date and of the date that decommissioning is completed.

6. Development and construction standards. Any future development of or construction on the Property shall be in full compliance with the Town Zoning Regulations and other ordinances, codes, rules and regulations of the Town pertaining to the development of the Property to be annexed, except as may be specifically amended pursuant to the terms of this Agreement.

7. Utilities and public improvements. As a condition of this Agreement, Developer is not requesting connection to, and service from, any Town utilities and public improvements. Developer understands that any future connection to these Town utilities and public improvements shall be done in accordance with the Town’s engineering standards and with the Town Zoning Regulations. Such extension of the Town’s utilities and public improvements to the Property, and all costs related thereto, shall be the responsibility of Developer. The Town agrees and acknowledges that Developer and/or ComEd may request construction, access, utility, or other real

estate rights within public rights-of-way under the Town's jurisdiction, in connection with interconnecting the Solar Project to the grid. The Town agrees to grant any such requests without unreasonable conditions or delay.

8. Term. The terms of this Agreement shall be for twenty (20) years from the date of the execution hereof, provided, however, if any of the terms of this Agreement or the annexation of the Property are challenged in a court proceeding, then the period of time during which this litigation is pending shall not, to the extent permitted by law, be included in calculating said twenty-year period or any extension thereof.

9. Covenant running with the land. Nothing herein contained shall be construed to restrict or limit the right of the Developer to sell, encumber, convey, or mortgage all or any portions of the Property, either before or after the same shall be improved, provided that each buyer or grantee and the Town shall be bound by the provisions of this Agreement and any Ordinance hereafter enacted implementing the same. Any such buyer or grantee shall have and enjoy the same rights and the same obligations under this Agreement with respect to the portion of the Property sold or conveyed by Developer. A memorandum may be recorded by the Town in the chain of title of the Property giving constructive notice of the existence of this Agreement.

10. Enforceability; severability. This Agreement shall be enforceable in any court of competent jurisdiction by any of the Parties or by an appropriate action at law or in equity to secure the performance of the terms that are herein contained. If any provision of this Agreement is held to be invalid by any court of competent jurisdiction, such provision shall be deemed to be excised herefrom and the invalidity thereof is not to affect any of the other provisions contained herein.

11. Non-waiver. Failure to enforce compliance with any term of this Agreement does not constitute waiver of any rights or obligations set forth in this Agreement.

12. No other agreements. All of the agreements and understandings of the Parties are contained and fully integrated in the terms of this Agreement, which supersedes all prior oral or written agreements and merges all contemporaneous discussions of the Parties.

13. Amendments. This Agreement may be amended by the mutual consent of the Parties hereto by the adoption of an ordinance by the Town. No amendment to the Agreement shall be needed as a part of the approval of any subdivision plat or development plan for any portion of the Property, where such plat or plan is processed and approved consistent with the otherwise applicable codes, laws, or ordinances of the Town or State of Illinois and any applicable provisions of this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties, by their duly authorized representatives, have caused this Agreement to be executed on the Effective Date.

TOWN OF CORTLAND

DEVELOPER

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

ATTEST:

Printed Name: _____

Title: _____

EXHIBIT A

Legal Description of the Property