
CLOSING MEMORANDUM

LEASE/LEASEBACK TRANSACTION
COUNTY OF LEWIS INDUSTRIAL DEVELOPMENT AGENCY
NUMBER THREE WIND LLC PROJECT

Date of Closing: December 13, 2021

Place of Closing: VIA MAIL

I. DESCRIPTION OF THE TRANSACTION:

In March, 2019, Number Three Wind LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of Delaware, submitted an application (the "Application") to County of Lewis Industrial Development Agency (the "Agency"), a public benefit corporation duly established under Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 62 of the 1973 Laws of New York, as amended, constituting Section 902-a of said General Municipal Law of the State of New York (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest or interests in various parcels of land (most approximately one-half acre in size) scattered amongst approximately 9,000 acres located on the eastern border of the Town of Lowville and throughout the Town of Harrisburg, Lewis County, New York (collectively, the "Land"), (2) the construction of various improvements to be located on the Land, including, but not limited to, the following: approximately thirty-one (31) 2.3/3.6 mega-watt series wind turbine generators (approximately 13 of such generators to be located in the Town of Lowville and approximately 18 generators to be located in the Town of Harrisburg), improvement foundations, POI switchyards, collection substations, and an operations and maintenance building (collectively, the "Facility"), (3) the construction of associated transmission lines and cables, other electrical interconnect infrastructure, and access roads (collectively, the "Infrastructure"), and (4) the acquisition and installation of certain machinery and equipment therein and thereon (collectively, the "Equipment") (the Land, the Facility, the Infrastructure and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to constitute the development of a wind energy facility to be owned and operated by the Company; (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 (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency.

Pursuant to the authorization contained in a resolution adopted by the members of the Agency on June 6, 2019 (the “Public Hearing Resolution”), the Executive Director of the Agency (A) caused notices of public hearings of the Agency (collectively, the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on June 13, 2019 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on (1) June 13, 2019 at the (a) Town of Lowville Town Hall in the Town of Lowville, County of Lewis, New York, and (b) Town of Harrisburg Town Hall in the Town of Harrisburg, County of Lewis, New York, and (2) June 13, 2019 on the Agency’s website, (C) caused notice of the Public Hearing to be published on June 12, 2019 in the Lowville Journal & Republican, a newspaper of general circulation available to the residents of Lewis County, New York, (D) conducted the Public Hearing (1) on June 25, 2019 at 10:00 a.m., local time at the offices of the Agency located at 7840 State Route 26 in the Town of Lowville, County of Lewis, New York, and on June 26, 2019 at 10:00 a.m. local time at the Town of Harrisburg Town Hall located at 7886 Cobb Road in the Town of Harrisburg, Lewis County, New York, and (E) prepared reports of each Public Hearing (collectively, the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of the Agency.

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 adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations”, and collectively with the SEQR Act, “SEQRA”), the Company submitted a preliminary scoping statement among other materials, documents, status reports, and filing letters (collectively, the “Materials”) to the New York State Board on Electric Generation Siting and the Environment (the “Siting Board”) with respect to the Project pursuant to Article 10 of the Public Service Law of the State of New York, as amended (“Article 10”).

The Project is exempt from review under SEQRA pursuant to the provisions of Article 10 of the Public Service Law and therefore no SEQRA review is required.

In order to preserve the sales tax exemption which forms a major portion of the Financial Assistance, the members of the Agency adopted a further resolution on June 27, 2019 (the “Agent Resolution”), subject to certain conditions, determining to temporarily appoint (A) the Company to act as agent of the Agency to undertake and complete the Project and (B) any general contractor (each, a “Contractor” and collectively, the “Contractors”), as sub-agents of the Agency to undertake the Project, said interim appointment to expire no later than January 31, 2020 (the “Initial Interim Term Date”).

By resolution adopted by the members of the Agency on April 1, 2021 (the “Resolution Extending Agent Appointment and Authorizing Interim Documents”), the Agency extended the Initial Interim Term Date and authorized the execution of Interim Documents.

By further resolution adopted by the members of the Agency on June 3, 2021 (the “Pilot Deviation Approval Resolution”) the Agency approved the deviation from the Agency’s uniform tax exemption policy.

By further resolution adopted by the members of the Agency on June 3, 2021 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of December 1, 2021 (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”). Pursuant to the terms of the Lease Agreement, (A) the Company will agree (1) to cause the

Project to be undertaken and completed, and (2) as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company. The Lease Agreement grants to the Company certain options to acquire the Project Facility from the Agency.

In February, 2021, the Agency received an amended application (the “Amended Application”) with respect to the Project from the Company, which Amended Application contains revised Project costs resulting in the need for the Agency, pursuant to Section 859-a of the Act, to hold a public hearing with respect to the Project and the amount of the Financial Assistance as described in the Amended Application.

Pursuant to the Amended Application, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Second Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on November 15, 2021 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Second Public Hearing to be posted on (1) November 17, 2021 on a public bulletin board located in the Town of Lowville office located at 5535 Bostwick Street in the Town of Lowville, Lewis County, New York and on the Agency’s website and (2) November 18, 2021 on a public bulletin board located at 7886 Cobb Road in the Town of Harrisburg, Lewis County, New York, (C) caused notice of the Second Public Hearing to be published on November 17, 2021 in the Watertown Daily Times a newspaper of general circulation available to the residents of Lewis County, New York, (D) conducted the Public Hearing on November 29, 2021 at 2:00 o’clock p.m., local time at the Town of Lowville offices located at 5535 Bostwick Street in the Town of Lowville, Lewis County, New York, and (E) prepared a report of the Second Public Hearing (the “Second Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Second Hearing Report to be made available to the members of the Agency.

Pursuant to SEQRA, Company is complying with Article 10 of the Public Service Law regarding the siting of electrical generating facilities.

Pursuant to the Amended Application, the Agency, by resolution adopted by the members on December 2, 2021 (the “Amended Approving Resolution”), determined to amend the Approving Resolution pursuant to the Amended Application.

Simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Company will execute and deliver to the Agency a certain lease to agency dated as of December 1, 2021 (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease 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”); (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of December 1, 2021 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree 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; (C) the Agency and the Company will execute and deliver the uniform agency project agreement dated as of December 1, 2021 (the “Uniform Agency Project Agreement”) by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency will file with the assessor and mail 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; (E) the Agency will execute and deliver 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 (F) the Agency will file 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").

In order to finance a portion of the costs of the Project, the Company will obtain a loan in the principal sum of up to \$212,915,473.60 (the "Loan") from Norddeutsche Landesbank Girozentrale, New York Branch, as Administrative Agent and Collateral Agent (the "Lender"), which Loan will be secured by a building loan mortgage, security agreement, assignment of leases and rents, financing statement and fixture filing dated as of December 1, 2021 (the "Mortgage") from the Agency and the Company to the Lender.

Among the actions taken by the Agency with respect to the Project prior to the Closing Date were the following:

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| March, 2019 | The Company filed an application, as amended in February 2021 (the "Application") relating to the Project with the Agency. |
| June 6, 2019 | The Agency adopted the Public Hearing Resolution. |
| June 13, 2019 | Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions. |
| June 12, 2019 | Notice of Public Hearing was published. |
| June 25, 2019 and
June 26, 2019 | The Agency conducted the Public Hearing. |
| June 27, 2019 | The Agency adopted the Agent Resolution. |
| April 1, 2021 | The Agency adopted the Resolution Extending Agent Appointment and Authorizing Interim Documents. |
| June 3, 2021 | The Agency adopted the Pilot Deviation Approval Resolution. |
| June 3, 2021 | The Agency adopted the Approving Resolution. |
| November 15, 2021 | Notice of the Second Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions. |

November 17, 2021 Notice of the Second Public Hearing was published.
 November 29, 2021 The Agency conducted the Second Public Hearing.
 December 2, 2021 The Agency adopted the Amended Approving Resolution.

II. PARTIES REPRESENTED AT THE CLOSING:

AGENCY: (A)
 Joseph R. Lawrence, Chairman
 Cheyenne Steria, Secretary/Treasurer
 Brittany Davis, Executive Director
 County of Lewis Industrial Development Agency

AGENCY COUNSEL: (AC)
 Kevin McArdle, Esq.
 Company, McArdle & Randall, PLLC

AGENCY AND SPECIAL COUNSEL: (HR)
 A. Joseph Scott, III, Esq.
 Nadene E. Zeigler, Esq.
 Hodgson Russ LLP

COMPANY: (C)
 Executive Director, Assistant General Counsel
 Number Three Wind LLC

COMPANY’S COUNSEL: (CC)
 John W. Dax, Esq.
 Hodgson Russ LLP

LCDC: (LCDC)
 Joseph R. Lawrence, Chair
 Lewis County Development Corporation

LENDER: (L)
 Norddeutsche Landesbank Girozentrale

III. ACTION TO BE TAKEN AT THE CLOSING:

The following documents, or copies thereof, are to be delivered (except as indicated) to the Agency, Agency’s Counsel, Special Counsel, the Company and the Company’s Counsel as follows:

	<u>Production Response.</u>	<u>Execution Response.</u>
A. <u>Basic Documents:</u>		
1. Underlying Lease.	HR	C,A

	<u>Production Response.</u>	<u>Execution Response.</u>
2. Memorandum of Underlying Lease, together with a combined real estate transfer tax return and credit line mortgage certificate (TP-584).	HR	C,A
3. Lease Agreement.	HR	C,A
4. Memorandum of the Lease Agreement, together with a combined real estate transfer tax return and a credit line mortgage certificate (TP-584).	HR	C,A
5. Payment in Lieu of Tax Agreement.	HR	C,A
6. Section 875 GML Recapture Agreement.	HR	C,A
7. Host Community Benefit Agreement.	HR	C,LCDC
8. Uniform Agency Project Agreement.	HR	C,A
9. Mortgage.	L	L,C
10. Certificates (and policies, if available) of casualty, liability, workers' compensation and other insurance required pursuant to the Lease Agreement.	CC	--
11. Closing Receipt.	HR	C,A
B. <u>Items to be delivered by the Agency:</u>		
1. General Certificate of the Agency regarding incumbency and signatures of officers, execution of the Basic Documents and the other documents to be executed by the Agency in connection therewith (the "Agency Documents"), no litigation and continued existence, with the following items included as exhibits:	HR	A
Exhibit A - Chapter 62 of the Laws of 1973;	HR	--
Exhibit B - Certificate of Establishment and Certificates of Appointment of the current members of the Agency, certified by the New York State Department of State, Miscellaneous Records Unit;	HR	--
Exhibit C - By-Laws of the Agency;	HR	--
Exhibit D - Public Hearing Resolution;	HR	A
Exhibit E - Proof of the mailing of notices of the Public Hearing to the chief executive officers of the affected tax jurisdictions;	A	A
Exhibit F - Proofs of the posting of notices of the Public Hearing;	A	A

	<u>Production Response.</u>	<u>Execution Response.</u>
Exhibit G - Proof of publication of notices of the Public Hearing;	A	A
Exhibit H - Reports of the Public Hearing;	A	--
Exhibit I - Agent Resolution;	HR	A
Exhibit J - Resolution Extending Agent Appointment and Authorizing Interim Documents;	HR	A
Exhibit K - Pilot Deviation Approval Resolution;	HR	A
Exhibit L - Approving Resolution;	HR	A
Exhibit M - Proof of the mailing of notice of the Second Public Hearing to the chief executive officers of the affected tax jurisdictions;	A	A
Exhibit N - Proofs of the posting of notice of the Second Public Hearing;	A	A
Exhibit O - Proof of publication of notice of the Second Public Hearing;	A	A
Exhibit P - Report of the Second Public Hearing; and	HR	A
Exhibit Q - Amended Approving Resolution.	HR	A
2. Certificate Regarding No Conflicts of Interest.	HR	A
3. Sales Tax Exemption Letter.	HR	A
4. Mortgage Recording Tax Affidavit.	HR	A
5. Real Property Tax Exemption Form.	HR	A
6. Proof of (A) Mailing and (B) filing of Real Property Tax Exemption Form to the Chief executive officer of the tax assessor of the affected tax jurisdiction.	HR	HR
7. Thirty-Day Sales Tax Report.	HR,CC	A
8. Proof of Mailing of Thirty-Day Sales Tax Report to the New York State Department of Taxation and Finance.	HR,CC	A
9. Special Counsel Disclosure Statement.	HR	HR
C. <u>Items to be delivered by the Company:</u>		
1. General Certificate of the Company regarding incumbency and signatures of officers, execution of the Lease Agreement and other Basic Documents to which the Company is a party (the "Company Documents"), no litigation and continued existence, with the following items included as exhibits:	HR,CC	C,CC

	<u>Production Response.</u>	<u>Execution Response.</u>
Exhibit A - Articles of Organization of the Company, certified by the Delaware Department of State, Corporations Unit;	CC	--
Exhibit B - Operating Agreement of the Company;	CC	--
Exhibit C - Certificate of Good Standing relating to the Company, certified by the Delaware Department of State and New York State Department of State, Corporations Unit;	CC	--
Exhibit D - Resolution of the members of the Company approving and authorizing the execution and delivery by the Company of the Company Documents; and	CC	--
Exhibit E - Pending Litigation.	CC	--
2. Affidavit of the Company.	HR	C
D. <u>Opinion of Counsel:</u>		
1. Opinion of Company, McArdle & Randall, PLLC, counsel to the Agency, addressed to the Agency, the Company and the Lender.	HR	AC
2. Opinion of Hodgson Russ LLP, counsel to the Company, addressed to the Agency, the Company and the Lender.	HR	CC
3. Opinion of Hodgson Russ LLP, Special Counsel, addressed to the Agency, the Company and the Lender.	HR	HR

**IV. ACTION TO BE TAKEN CONCURRENTLY WITH
OR AFTER THE CLOSING:**

1. The Underlying Lease to Agency (or a memorandum thereof), the Lease Agreement (or a memorandum thereof), the Mortgage are to be recorded in that order by the Company in the office of the County Clerk of Lewis County, New York.

2. The Real Property Tax Exemption Form, with a copy of the Payment in Lieu of Tax Agreement attached thereto is to be (A) filed by the Agency (or by Agency Counsel) with the appropriate assessor of each of the Affected Tax Jurisdictions and (B) mailed by the Agency (or by Agency Counsel) to the assessor and the chief executive officers of each of the Affected Tax Jurisdictions.

3. The Thirty-Day Sales Tax Report is to be mailed to the New York State Department of Taxation and Finance.