
CLOSING MEMORANDUM

LEASE/LEASEBACK TRANSACTION
COUNTY OF LEWIS INDUSTRIAL DEVELOPMENT AGENCY
MARTINSBURG CSG LLC PROJECT

Date of Closing: October 11, 2022

Place of Closing: VIA MAIL

I. DESCRIPTION OF THE TRANSACTION:

In May, 2021, NY Solar One, LLC (the “Original Company”), a limited liability company duly organized and validly existing under the laws of the State of New York, submitted an application (the “Original 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 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 Original Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Original Company, said Project to include the following: (A) (1) the acquisition of an interest in a portion of an approximately 65.30 acre parcel of land located at 6424 State Route 26 (tax map no. 243.00-01-15.210) in the Town of Martinsburg, Lewis County, New York (the “Land”), (2) the construction on the Land of an approximately 2.158MWAC/3.02 MWdc community solar photovoltaic facility, including 5,512 solar panels, inter-row spacing and equipment space, screw driven racking posts, 18 string inverters, a transformer and utility pole mounted equipment (all said improvements being collectively referred to as the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”), all of the foregoing to constitute a solar energy generating facility to be owned and operated by the Original Company (the Land, Facility and the Equipment being collectively referred to as 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 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 Original Company or such other person as may be designated by the Original Company and agreed upon by the Agency.

Pursuant to the authorization contained in a resolution adopted by the members of the Agency on June 3, 2021 (the “Public Hearing Resolution”), the Executive Director of the Agency (A) caused notice of

a public hearing of the Agency (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 21, 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 Public Hearing to be posted on June 22, 2021 on a bulletin board located at the Town of Martinsburg Municipal Offices located at 5405 Cemetery Road in the Town of Martinsburg, Lewis County, New York and on the Agency’s website; (C) caused notice of the Public Hearing to be published on June 24, 2021 in the Watertown Daily Times, a newspaper of general circulation available to the residents of the Town of Martinsburg, Lewis County, New York; (D) as a result of the ban on large meetings or gatherings pursuant to Executive Order 202.1, as supplemented, and the suspension of the Open Meetings Law relating to public hearings pursuant to Executive Order 202.15, as supplemented, each as issued by Governor Cuomo in response to the novel Coronavirus (COVID-19) pandemic, conducted the Public Hearing on July 6, 2021 at 3:00 o’clock p.m., local time via electronically and in-person at the Town of Martinsburg Municipal Offices located at 5405 Cemetery Road located in the Town of Martinsburg, Lewis County, New York, and (E) prepared a report of the Public Hearing (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 (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on August 5, 2021 (the “SEQR Resolution”), the Agency (A) concurred in the determination that the Town of Martinsburg Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA, and (B) acknowledged receipt of a negative declaration from the Planning Board issued on February 3, 2021 (the “Negative Declaration”), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project.

By further resolution adopted by the members of the Agency on August 5, 2021 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of October 1, 2022 (the “Lease Agreement”) between the Agency and the Original Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”).

Subsequent to the adoption of the Approving Resolution, the Agency received an amended application (the “Amended Application” and collectively with the Original Application, the “Application”), which Amended Application among other changes, requested the Agency to agree to the designation of Martinsburg CSG LLC as the Company and as the Project beneficiary in the Basic Documents. By further resolution adopted by the members of the Agency on June 2, 2022 (the “Resolution Authorizing Change in Project Beneficiary and Increase Benefits”), the Agency agreed to the designation of Martinsburg CSG LLC (the “Company”) as the Company to undertake the completion of the Project. 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.

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 October 1, 2022 (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 October 1, 2022 (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 October 1, 2022 (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”).

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

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| May, 2021 | The Original Company filed an application (the “Application”) relating to the Project with the Agency. |
| June 3, 2021 | The Agency adopted the Public Hearing Resolution. |
| June 21, 2021 | Notice of the Public Hearing was mailed to the chief executive officers of the affected tax jurisdictions. |
| June 24, 2021 | Notice of Public Hearing was published. |
| July 6, 2021 | The Agency conducted the Public Hearing. |
| August 5, 2021 | The Agency adopted the SEQR Resolution. |
| August 5, 2021 | The Agency adopted the Approving Resolution. |
| June 2, 2022 | The Agency adopted the Resolution Authorizing Change in Project Beneficiary and Increase Benefits. |

II. PARTIES REPRESENTED AT THE CLOSING:

AGENCY:

Joe Lawrence, Chairman
 Brittany Davis, Executive Director of Economic Development
 County of Lewis Industrial Development Agency

(A)

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)
 Kieran Siao
 Martinsburg CSG LLC

COMPANY'S COUNSEL: (CC)
 Jeffrey W. Davis, Esq.
 Barclay Damon LLP

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
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. Uniform Agency Project Agreement.	HR	C,A
8. Certificates (and policies, if available) of casualty, liability, workers' compensation and other insurance required pursuant to the Lease Agreement.	CC	--
9. Closing Receipt.	HR	C,A

	<u>Production Response.</u>	<u>Execution Response.</u>
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 - SEQR Resolution;	HR	--
Exhibit F - Proof of the mailing of notice of the Public Hearing to the chief executive officers of the affected tax jurisdictions;	A	A
Exhibit G - Proof of the posting of notice of the Public Hearing;	A	A
Exhibit H - Proof of publication of notice of the Public Hearing;	A	A
Exhibit I - Report of the Public Hearing;	A	--
Exhibit J - Approving Resolution; and	HR	A
Exhibit K - Resolution Authorizing Change in Project Beneficiary and Increase Benefits.	HR	A
2. Certificate Regarding No Conflicts of Interest.	HR	A
3. Sales Tax Exemption Letter.	HR	A
4. Real Property Tax Exemption Form.	HR	A
5. 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
6. Thirty-Day Sales Tax Report.	HR,CC	A
7. Proof of Mailing of Thirty-Day Sales Tax Report to the New York State Department of Taxation and Finance.	HR,CC	A

	<u>Production Response.</u>	<u>Execution Response.</u>
8. 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
Exhibit A - Articles of Organization of the Company, certified by the State of New York 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 State of New York 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 Campany, McArdle & Randall, PLLC, counsel to the Agency, addressed to the Agency and the Company.	HR	AC
2. Opinion of Barclay Damon LLP, counsel to the Company, addressed to the Agency and the Company.	HR	CC
3. Opinion of Hodgson Russ LLP, Special Counsel, addressed to the Agency and the Company.	HR	HR

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

1. The Underlying Lease to Agency (or a memorandum thereof) and the Lease Agreement (or a memorandum thereof) 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 Special Agency Counsel) with the appropriate assessor of each of the Affected Tax Jurisdictions and (B) mailed by the Agency (or by Special 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.