

FINAL RESOLUTION
(Omni Navitas Holdings LLC Project)
9557 East Road

A regular meeting of the Lewis County Industrial Development Agency was convened on Thursday, September 3, 2020.

The following resolution was duly offered and seconded, to wit:

Resolution No.

RESOLUTION OF THE LEWIS COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACKNOWLEDGING THE PUBLIC HEARING HELD WITH RESPECT TO THE OMNI NAVITAS HOLDINGS LLC PROJECT 9557 EAST ROAD (AS MORE FULLY DESCRIBED BELOW) ON AUGUST 20, 2020; (ii) AUTHORIZING FINANCIAL ASSISTANCE (AS MORE FULLY DESCRIBED BELOW) FOR THE BENEFIT OF THE OMNI NAVITAS HOLDINGS LLC PROJECT; (iii) AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 178 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **LEWIS COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **OMNI NAVITAS HOLDINGS LLC**, for itself or on behalf of an entity to be formed (collectively, the "Company"), previously submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of: (A) the acquisition and installation of up to a 2.25 megawatt photovoltaic solar energy system (the "Improvements") for the purpose of operating a wind energy facility on land off 9557 East Road in the Town of Denmark, Lewis County, New York (the "Land"), and (B) the acquisition and installation of machinery, equipment and other tangible personal property in, upon and around the Improvements and the Land (the "Equipment"; and collectively with the Land and the Improvements, the "Facility"), and (C) paying certain costs and expenses incidental to those activities (the costs associated with items A and B above being hereinafter collectively referred to as "Project Costs"); and

WHEREAS, by resolution adopted by the Agency on July 2, 2020 (the "Inducement Resolution"), the Agency accepted the Application as submitted by the Company and, among other things, (i) described the Financial Assistance (as defined below) being contemplated by the Agency and (ii) authorized the Agency to hold a public hearing regarding the contemplated Financial Assistance; and

WHEREAS, pursuant to General Municipal Law Section 859-a, on Thursday, August 20, 2020, at Denmark Town Hall, 3707 Roberts Road, Carthage, New York, at 4:00 p.m. , local time, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the minutes of the Public Hearing along with the notice of the Public Hearing published and forwarded to the affected taxing jurisdictions at least ten (10) days prior to said Public Hearing are attached hereto as Exhibit A; and

WHEREAS, the Town of Denmark, as lead agency, (1) accepted an environmental impact statement prepared with respect to the Project as the final environmental impact statement with respect thereto, pursuant to New York's State Environmental Quality Review Act and regulations promulgated pursuant thereto ("SEQRA"), (2) on March 2, 2020 adopted a statement of findings and determination relative to the environmental impact statement as the lead agency written findings statement relative to the Project, as required by SEQRA; and

WHEREAS, the Agency desires to adopt a resolution (i) acknowledging that the Public Hearing was held in compliance with the Act; (ii) authorizing the negotiation, execution and delivery by the Agency of the Project Agreement, the Lease Agreement, the Leaseback Agreement, the Tax Agreement and related documents (as each is defined in the Inducement Resolution); and (iii) providing Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, and equipping of the Facility and (b) a partial real property tax abatement structured within the Tax Agreement (collectively, the "Financial Assistance"); and

WHEREAS, the Project Agreement, the Lease Agreement, the Leaseback Agreement, the Tax Agreement and related documents are being negotiated and will be presented for execution and delivery subject to approval of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE LEWIS COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Public Hearing held by the Agency on Thursday, August 20, 2020, at Denmark Town concerning the Project and the Financial Assistance was duly held in accordance with the Act, including, but not limited to, the giving of at least ten (10) days published notice of the Public Hearing (such notice also provided to the chief executive officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project.

Section 2. The Agency ratifies the Town of Denmark's findings and determinations of March 2, 2020 relative to the environmental impact of the Project, as the lead agency, as required by SEQRA.

Section 3. The Agency is hereby authorized to provide to the Company financial assistance in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project and (b) a partial real property tax abatement structured through the Tax Agreement, (the "Financial Assistance").

Section 4. Based upon the representation and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately \$2,580,139.00, which result in New York State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") not to exceed \$206,411. The Agency agrees to consider any requests by the Company for increase to the amount of Sales and Use Tax Exemption Benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 5. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any Sales and Use Tax Exemption Benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the Sales and Use Tax Exemption Benefits; (ii) the Sales and Use Tax Exemption Benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the Sales and Use Tax Exemption Benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for financial assistance; (v) the

Sales and Use Tax Exemption Benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (vi) are hereby defined as a "Recapture Event").

As a condition precedent of receiving Sales and Use Tax Exemption Benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any Sales and Use Tax Exemption Benefits, and/or real property tax abatements abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 6. Subject to the Company executing the Project Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project: (i) to acquire, reconstruct, renovate and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, and (iii) in general, to do all things which may be requisite or proper for completing the Project, *provided, however*, the Project Agreement shall expire on December 31, 2021 (unless extended for good cause by the Executive Director of the Agency) if the Lease Agreement, the Leaseback Agreement and the Tax Agreement contemplated have not been executed and delivered

Section 7. The Chairman, the Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (A) the Project Agreement, pursuant to which the Agency will appoint the Company as its agent to undertake the Project, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, and (D) the Tax Agreement (the terms of which shall provide a full exemption from ad valorem taxation with respect to the Facility, provided, however, the Company must satisfy certain conditions for such exemption as set forth in the Tax Agreement); provided (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 8. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute, deliver and record any security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender/financial institution identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or re-finance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and Tax Agreement, collectively called the "Agency Documents"); and, where appropriate, the Secretary or Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman and/or Executive Director of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman and/or Executive Director of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 10. These Resolutions shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Joseph Lawrence	[×]	[]	[]	[]
Ron Burns	[×]	[]	[]	[]
Darlene Rowsam	[×]	[]	[]	[]
Gagan Singh	[]	[]	[×]	[]
Jerry Cayer	[×]	[]	[]	[]
Thomas Gillette	[×]	[]	[]	[]

The Resolutions were thereupon duly adopted.