

**RESOLUTION AUTHORIZING PILOT DEVIATION LETTER AND  
PUBLIC HEARING TO AMEND BASIC DOCUMENTS  
501 BROADWAY TROY, LLC**

A regular meeting of Rensselaer County Industrial Development Agency (the "Agency") was convened in public session in the 3rd Floor Conference Room at the Quackenbush Building located at 333 Broadway in the City of Troy, Rensselaer County, New York on April 12, 2018 at 4:00 o'clock p.m., local time.

The meeting was called to order by the (~~Vice~~) Chairman of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

John H. Clinton, Jr.	Chairman
Michael Della Rocco	Vice Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
Douglas Baldrey	Member
<del>James Church</del>	<del>Member</del>
Renee Powell	Member

**ABSENT:**

J. Church

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Robert L. Pasinella, Jr.	Executive Director
Robin LaBrake	Assistant
Peter R. Kehoe, Esq.	Agency Counsel
George W. Cregg, Jr., Esq.	Special Counsel
A. Joseph Scott, III, Esq.	Special Counsel

The following resolution was offered by C. Henninger, seconded by R. Bounds, to wit:

Resolution No. 0418-11

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO (A) SEND A LETTER TO THE CHIEF EXECUTIVE OFFICERS OF THE AFFECTED TAXING ENTITIES INFORMING THEM OF A PROPOSED DEVIATION FROM THE AGENCY'S UNIFORM TAX EXEMPTION POLICY, (B) CONDUCT A PUBLIC HEARING, (C) EXTEND SALES TAX EXEMPTION BENEFITS, (D) PROVIDE OTHER ADDITIONAL BENEFITS, (E) ENTER INTO A UNIFORM PROJECT BENEFITS AGREEMENT AND (F) AMEND THE BASIC DOCUMENTS IN CONNECTION WITH THE **501 BROADWAY TROY, LLC** PROJECT.

WHEREAS, Rensselaer County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of 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 128 the 1974 Laws of New York, as amended, constituting Section 903-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, on June 14, 2016 (the "Closing"), the Agency granted certain financial assistance to 501 Broadway Troy, LLC (the "Company") in connection with a project (the "Project"), said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 1.29 acre parcel of land located at 501 Broadway (tax map no. 101.54-3-1) in the City of Troy, Rensselaer County, New York (the "Land"), together with an approximately 51,000 square foot building located thereon (the "Existing Facility"), (2) the potential construction of an approximately 70,000-110,000 square foot addition to the Existing Facility with potential for structure parking to provide for an additional 60-90 apartments (collectively, the "Addition") (the Existing Facility and the Addition being sometimes referred to as the "Facility"); (3) the renovation and reconstruction of the Facility, including, but not limited to, demolition of a portion of the Existing Facility, and (4) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property, including without limitation, tenant improvements and finishes (collectively, the "Equipment") (the Land, the Facility, and the Equipment being collectively referred to as the "Project Facility"); all of the foregoing to constitute a mixed use apartment complex, commercial/retail facility and associated uses 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 sales taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and the Company; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of June 1, 2016 (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"); (2) a certain license agreement dated as of June 1, 2016 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company granted to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a bill of sale dated as of June 1, 2016 (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 June 1, 2016 (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; (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"); and

WHEREAS, subsequent to the Closing, (A) the Agency and BBL Construction Services, LLC and BBL-Carlton, L.L.C. (collectively, the "Contractors" and individually, the "Contractor") entered into (1) a certain agency indemnification agreement dated as of August 1, 2017 (the "Contractor Agency and Indemnification Agreement") by and between the Agency and each Contractor and (2) a certain recapture agreement dated as of August 1, 2017 (the "Contractor Section 875 GML Recapture Agreement") by and between the Agency and each Contractor, (B) the Agency executed and delivered to each Contractor a sales tax exemption letter (the "Contractor Sales Tax Exemption Letter") and (C) the Agency filed a Thirty-Day Sales Tax Report (the "Contractor Thirty-Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the "Additional Thirty-Day Project Report", and collectively with the above enumerated documents, the "Basic Documents"); and

WHEREAS, the Company has made a request to the Agency (the "Request"), which Request is attached hereto as Exhibit A, that the Agency (A) extend the Completion Date (as defined in the Lease Agreement) from June 1, 2018 to December 31, 2019, (B) 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 and (C) provide additional benefits to the Company (collectively, the "Additional Benefits"); and

WHEREAS, the First Amendment to Payment in Lieu of Tax Agreement will be a deviation from the Agency's uniform tax exemption policy, said deviation as outlined in Exhibit A and as outlined by the Executive Director of the Agency at this meeting (the "Deviation"); and

WHEREAS, pursuant to Section 874(4) of the Act, prior to taking final action on such request for a deviation from the Agency's uniform tax exemption policy, the Agency must give the chief executive officers of the County and each city, town, village and school district in which the Project Facility is located (collectively, the "Affected Tax Jurisdictions") prior written notice of the proposed deviation from the Agency's uniform tax exemption policy and the reasons therefor; and

WHEREAS, pursuant to Section 856(15) of the Act, unless otherwise agreed by the affected tax jurisdictions, payments in lieu of taxes must be allocated among the affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the Project Facility not been tax exempt due to the status of the Agency; and

WHEREAS, the Request extends the Completion Date, so the terms of the Basic Documents will need to be modified in order to accommodate the Request (the "Modification"); and

WHEREAS, in connection with the Modification, the Agency and the Company will enter into a certain modification agreement (the "Modification Agreement"), by and between the Company and the Agency; and

WHEREAS, also in connection with the Request and pursuant to the Act, the Company and the Agency are required to enter into a uniform project benefits agreement (the "Uniform Project Benefits Agreement"), which Uniform Project Benefits Agreement outlines the Financial Assistance being provided by the Agency to the Company and the potential recapture of such assistance; 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 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 Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Request; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and it appears that the Request constitutes a Type II action under SEQRA; and

WHEREAS, the Additional Benefits and the Deviation will cause the Agency to provide additional financial assistance in excess of \$100,000, therefore pursuant to Section 859-a of the Act, prior to the Agency providing any financial assistance of more than \$100,000 to any project, the Agency, among other things, must hold a public hearing with respect said project;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The law firm of Hodgson Russ LLP is hereby appointed Special Counsel to the Agency with respect to all matters in connection with the Request. Special Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, counsel to the Company and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

Section 2. Based upon an examination of the Request, the Agency hereby determines that the Request constitutes a "Type II action" pursuant to 6 NYCRR 617.5(26), and therefore that, pursuant to 6 NYCRR 617.6(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

Section 3. The Agency hereby authorizes the Executive Director of the Agency, after consultation with the members of the Agency and Agency Counsel, (A) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Request, said public hearing to be held in the city, town or village where the Project Facility is or is to be located; (B) to cause notice of such public hearing to be given to the public by publishing a notice of such hearing in a newspaper of general circulation to available to the residents of the governmental units where the Project Facility is or is to be located, such notice to comply with the requirements of Section 859-a of the Act; (C) to cause notice of

said public hearing to be given to the chief executive officer of the county and each city, town, village and school district in which the Project Facility is or is to be located to comply with the requirements of said public hearing; (D) to conduct such public hearing; and (E) to cause a report of said public hearing fairly summarizing the views presented at said public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency.

Section 4. Having considered the Request, the Executive Director is hereby authorized to send a written notice to the chief executive officers of each of the Affected Tax Jurisdictions (A) informing them that the Agency is considering the Deviation, as outlined in Exhibit A and as outlined by the Executive Director of the Agency at this meeting, from its uniform tax exemption policy with respect to the Project and the reasons therefor and (B) soliciting any comments that such Affected Tax Jurisdictions may have with respect to said proposed deviation.

Section 5. Subject to (A) compliance with Section 859-a of the Act, (B) execution and delivery of the Modification Agreement by and among the Company, the Agency and the Contractors, (C) execution and delivery of the Uniform Project Benefits Agreement by and between the Agency and the Company, (D) compliance with the terms and conditions in the Basic Documents, (E) evidence of current insurance coverage provided by the Company and the Contractors, and (F) the payment by the Company of all fees and expenses of the Agency in connection with the delivery of the Modification Agreement and the Uniform Project Benefits Agreement, including the fees of Agency Counsel and Special Counsel, the Agency hereby (a) consents to the extension of the expiration date of the Sales Tax Exemption Letter and Contractor Sales Tax Exemption Letter to December 31, 2019 (b) consents to the Additional Benefits, and (c) determines to enter into the Modification Agreement and the Uniform Project Benefits Agreement.

Section 6. The form and substance of the Modification Agreement and the Uniform Project Benefits Agreement (in substantially the forms presented to this meeting) are hereby approved.

Section 7. Subject to the satisfaction of the conditions described in Section 5 hereof, the Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver the Modification Agreement and the Uniform Project Benefits Agreement to the Company, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

Section 8. 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 or provided for by the provisions of the Modification Agreement and the Uniform Project Benefits Agreement, and to execute and deliver all such additional 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 Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Modification Agreement and the Uniform Project Benefits Agreement binding upon the Agency.

Section 9. This Resolution 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:

John H. Clinton, Jr.	VOTING	<u>YES</u>
Michael Della Rocco	VOTING	<u>YES</u>
Cynthia A. Henninger	VOTING	<u>YES</u>
Ronald Bounds	VOTING	<u>YES</u>
Douglas Baldrey	VOTING	<u>YES</u>
James Church	VOTING	<u>ABSENT</u>
Renee Powell	VOTING	<u>YES</u>

The foregoing Resolution was thereupon declared duly adopted.

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

I, the undersigned (~~Assistant~~) Secretary of Rensselaer County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on April 12, 2018 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 12<sup>th</sup> day of April, 2018.

  
\_\_\_\_\_  
(~~Assistant~~) Secretary

(SEAL)

EXHIBIT A

REQUEST

**- SEE ATTACHED -**





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www.rosenblumcompanies.com

March 29, 2018

Rensselaer County Industrial Development Agency (IDA)  
c/o Department of Economic Development & Planning  
ATTN: Robert Pasinella, Executive Director  
Rensselaer County Office Building  
1600 Seventh Avenue  
Troy, New York 12180

Re: Rensselaer County Industrial Development Agency (the "Agency")  
Straight lease transaction dated as of June 1, 2016 with  
501 Broadway Troy, LLC (the "Company");  
501 Broadway, Troy, New York (the "Project")

Dear Mr. Pasinella and Honorable Board Members of the Rensselaer County IDA:

The Company is grateful for the financial assistance provided by the Agency for the above Project. We continue to believe that this Project will expand the reach of Troy's ongoing revitalization and drive economic development while yielding meaningful long term increases in tax revenues. However, due to unforeseen site conditions primarily related to a legacy subsurface electric line, construction on the Project is behind schedule. In addition, project costs were substantially higher than estimated due in part but not limited to increases from the aforementioned site conditions and the installation of an environmentally sustainable geothermal heating and cooling system. Finally, the project is currently financed with a floating rate construction loan and we do not anticipate closing permanent financing until 2019. With the increased project costs and interest rate increases, we expect the PILOT will be a key consideration for lenders.

We are thus respectfully requesting the following updates to our agreements with the Agency:

- (i) the completion date be amended to be December 31, 2019,
- (ii) the PILOT exemption period start on July 1, 2019 (a delay, but not an increase in the approved term, or any additional financial assistance),
- (iii) an increase in the mortgage recording tax exemption to \$217,539, and
- (iv) an increase in the sales tax exemption to \$1,160,206.

Please note that our requested additional financial assistance is under \$100,000.

Attached please find our updated budget to date, and below is a list of the contractors appointed as sub-agents of the Agency for the Project:

- (i) BBL Construction Services, LLC
- (ii) BBL Carlton, LLC



In order to not further slow down our construction timetable, we would respectfully request that this matter be added to the agenda for the Agency's April 12, 2018 meeting, if at all possible.

Again, thank you for your support.

Please feel free to call with any questions or if you need any additional information.

501 BROADWAY TROY, LLC  
By Rosenblum Development Corporation  
Its Manager

A handwritten signature in black ink, appearing to read 'Seth D. Rosenblum'.

Seth D. Rosenblum, President

cc: Nadene E. Zeigler, Esq.  
Milan K. Tyler, Esq.

Attachment(s)