

**RESOLUTION AUTHORIZING EXECUTION OF SUBORDINATION AGREEMENT
PCC CASTLETON CORPORATION PROJECT**

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 November 8, 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:

Michael Della Rocco	Vice Chairman
Cynthia A. Henninger	Secretary/Treasurer
Ronald Bounds	Assistant Secretary/Treasurer
Douglas Baldrey	Member
James Church	Member
Renee Powell	Member

ABSENT:

John H. Clinton, Jr.	Chairman
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

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

The following resolution was offered by Cynthia A. Henninger, seconded by Renee Powell, to wit:

Resolution No. 0118-06

RESOLUTION AUTHORIZING THE EXECUTION BY RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN SUBORDINATION AGREEMENT IN CONNECTION WITH THE PCC CASTLETON CORPORATION 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 of 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 manufacturing, and 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 entered into a lease agreement dated as of June 1, 2016 (the "Lease Agreement") by and between the Agency and PCC Castleton Corporation (the "Company") for the purpose of undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in a portion of an approximately 27.97 acre parcel of land located at 22 Hamilton Way in the Town of Schodack, Rensselaer County, New York (tax map no. 198.-4-1.11) (the "Land"), together with an approximately 100,000 square foot building located thereon (the "Facility"), (2) the renovation of the Facility, and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the "Equipment"), all of the foregoing to be owned by the Company and leased to Hudson River Foods Corporation and Cell-Nique Corporation (collectively, the "Tenant") and to constitute a food processing and packaging facility (the Land, the 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 of the Project Facility to the Company pursuant to the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, (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 Original 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") (the above enumerated documents being collectively referred to as the "Basic Documents"); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of up to \$900,000 (the "Loan") from Hamilton Industrial Corporation (the "Lender"), which Loan was secured by a mortgage, security agreement and assignment of leases and rents dated as of June 14, 2016 (the "Mortgage") from the Agency and the Company to the Lender; and

WHEREAS, on the condition that the Lease Agreement be subordinate to New York Business Development Corporation's ("NYBDC") loan to the Company in the amount of \$500,000.00 (the "Bank Loan"), NYBDC made the Bank Loan to the Company, which Bank Loan was secured by, among other things, a first mortgage on the Project Facility from the Company to NYBDC via a Mortgage Modification Agreement dated December 14, 2016 which was recorded with the Rensselaer County Clerk on December 16, 2016 in Volume 8038 of Records at Page 166 (the "Bank's First Mortgage"); and

WHEREAS, on the condition that the Lease Agreement be further subordinate to Empire State Certified Development Corporation's ("ESCDC") loan to the Company in the amount of \$412,000.00 (the "ESCDC Financing"), ESCDC made the ESCDC Financing to the Company pursuant to a certain AUTHORIZATION FOR DEBENTURE GUARANTEE number 81870450-09 dated January 20, 2016, as amended if amended (the "Authorization") issued by the U.S. Small Business Administration (the "SBA") under its 504 Loan Program. The ESCDC Financing was secured by, among other things, a second mortgage on the Project Facility from the Company to NYBDC dated December 16, 2016, which mortgage was recorded with the Rensselaer County Clerk in Volume 8038 of Records at Page 166, which mortgage was assigned to the SBA via assignment dated December 14, 2016 which assignment was recorded with the Rensselaer County Clerk on December 16, 2016 in Volume 8038 of Records at Page 205 (the "ESCDC Third Mortgage"); and

WHEREAS, on the condition that the Lease Agreement be further subordinate to NYBDC's loan to the Company in the amount of \$1,457,500.00 (the "Bank's Second Loan" collectively with the Bank Loan as the "Bank's Loans"), NYBDC made the Bank's Second Loan to the Company, which Bank's Second Loan was secured by, among other things, a second mortgage on the Project Facility from the Company to NYBDC dated October 27, 2017 which Mortgage was recorded with the Rensselaer County Clerk on December 13, 2017 in Book 8383 at Page 197 (the "Bank's Second Mortgage"); and

WHEREAS, on the condition that the Lease Agreement be further subordinate to ESCDC's loan to the Company in the amount of \$1,194,000.00 (the "ESCDC Secondary Financing"), ESCDC made the ESCDC Secondary Financing to the Company pursuant to a certain AUTHORIZATION FOR DEBENTURE GUARANTEE number 90281350-09 dated November 4, 2016, as amended if amended (the "Authorization") issued by the U.S. Small Business Administration (the "SBA") under its 504 Loan Program; and

WHEREAS, NYBDC also provide an interim loan to the Company in the amount of \$1,166,000.00 (the "Interim Loan") which loan was secured by, among other things, a fourth mortgage on the Project Facility in the amount of \$1,194,000.00 from the Company to ESCDC dated October 27, 2017, which mortgage was recorded with the Rensselaer County Clerk on January 18, 2018 in Book 8407 at Page 138 (the "Interim Loan Mortgage"); and

WHEREAS, ESCDC will assign the Interim Loan Mortgage to the SBA (upon assignment the Interim Loan Mortgage shall become the "ESCDC Fourth Mortgage"). The ESCDC Financing and ESCDC Secondary Financing are collectively referred to herein as the "ESCDC Financings" and the

ESCDC Third Mortgage and ESCDC Fourth Mortgage are collectively referred to herein as the (ESCDC's Mortgages"); and

WHEREAS, the Agency previously subordinated the Lease Agreement and the Underlying Lease to NYBDC's First Mortgage and the ESCDC Third Mortgage via a Lease Subordination Agreement dated December 14, 2016 which agreement was recorded with the Rensselaer County Clerk; and

WHEREAS, by correspondence dated November 1, 2018 (the "Request"), which Request is attached hereto as Exhibit A, the Company has requested the Agency to enter into a subordination agreement to have the Agency subordinate the Lease Agreement and the Underlying Lease to both of NYBDC's Mortgages and both of the ESCDC Mortgages (the "Amended Lease Subordination Agreement") by and among the Company, the Agency and ESCDC; 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;

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

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) The Request constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(23), and therefor that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of "financial assistance" (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. Subject to (A) approval of the form of the Amended Lease Subordination Agreement by Agency counsel, (B) receipt of confirmation that all real property taxes and payments in lieu of taxes required by the Project have been satisfied and (C) receipt by the Executive Director of (1) the Agency's administrative fee relating to the Request, if any, and (2) counsel's fees relating to the Request, the Agency hereby (a) consents to the Request and (b) authorizes the execution by the Agency of the Amended Lease Subordination Agreement.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairman (or Vice Chairman) or Executive Director of the Agency is hereby authorized to execute and deliver the Amended Lease Subordination 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) or Executive Director shall approve, the execution thereof by the Chairman (or Vice Chairman) or Executive Director to constitute conclusive evidence of such approval.

Section 4. 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 Amended Lease Subordination 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 Amended Lease Subordination Agreement binding upon the Agency.

Section 5. 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	ABSENT
Michael Della Rocco	VOTING	YES
Cynthia A. Henninger	VOTING	YES
Ronald Bounds	VOTING	YES
Douglas Baldrey	VOTING	YES
James Church	VOTING	YES
Renee Powell	VOTING	YES

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 extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on November 8, 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 the whole of such proceedings of the Agency and of such Resolution set forth therein 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 8th day of November, 2018.


(~~Assistant~~) Secretary

(SEAL)

EXHIBIT A
REQUEST

From: Mathew P. Barry [<mailto:mbarry@HarrisBeach.com>]
Sent: Thursday, November 1, 2018 11:29 AM
To: Zeigler, Nadene <NZeigler@hodgsonruss.com>
Cc: Leesa Naimo <lnaimo@NYBDC.COM>; 'John King' <jking@NYBDC.COM>
Subject: RE: RCIDA/PCC Castleton - IDA lease subordination (new closing)
Importance: High

Nadene,

In December of 2016 NYBDC and the US SBA closed on two loans to PCC Castleton Corporation. You represented the Rensselaer Co. IDA in the matter and agreed to have the attached lease subordination executed (which it was).

Leesa and I are now closing two additional NYBDC and SBA loans to the same borrower and need to have the attached amended lease subordination agreement executed in light of the two new mortgages. As you will see the attached draft subordination is in the same form and substance as the 2016 agreement but for the fact that this version adds the additional 3rd and 4th position mortgages.

We need to close this by November 7th. Sorry for the short notice.

Let me know if you have any questions/concerns.

Regards.

Matt

Mathew P. Barry
Partner

HARRIS BEACH PLLC

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