

**RESOLUTION AUTHORIZING REFINANCING  
API SCHODACK, LLC 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 December 12, 2019 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
John H. Clinton, Jr.	Chairman
Renee Powell	Member

**ABSENT:**

James Church	Member
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**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Robert L. Pasinella, Jr.	Executive Director
Robin LaBrake	Assistant
John E. Sweeney, Esq.	Special Agency Counsel
Peter R. Kehoe, Esq.	Special Agency Counsel
M. Cornelia Cahill, Esq.	Special Counsel

The following resolution was offered by Cynthia H. Henniger, seconded by Ronald Bounds, to wit:

Resolution No. 1219-07

**RESOLUTION AUTHORIZING THE EXECUTION BY RENSSELAER  
COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN  
MORTGAGE AND RELATED DOCUMENTS IN CONNECTION WITH  
THE API SCHODACK 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 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 February 13, 2009 the Agency undertook a project (the “Project”) on behalf of the Company consisting of the following: (A) (1) the acquisition of an interest in a parcel of land located at 20 Empire State Boulevard in the Town of Schodack, Rensselaer County, New York (the “Land”), together with an approximately 86,000 square foot building located thereon (the “Existing Facility”), (2) construction on the Land of an approximately 22,000 square foot addition to the Existing Facility (the “Facility”) and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the “Equipment”), all of the foregoing to constitute the expansion of an existing wholesale parts distribution facility to be leased by the Company to Atlantic Power, Inc. (the “Tenant”) (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 estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); (C) the lease of the Project Facility to the Company pursuant to the Lease Agreement; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance, the Agency entered into the following documents (hereinafter collectively referred to as the “Project Documents”): (A) a certain lease to agency dated as of February 1, 2009 (and a memorandum thereof) dated as of February 1, 2009, (the “Lease to Agency”) by and between the Company and the Agency, pursuant to which, among other things, the Agency acquired a leasehold interest in the Land and the improvements now or hereafter located on the Land from the Company, (B) a certain license agreement dated as of February 1, 2009 (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company will grant 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 (as hereinafter defined); (C) a lease agreement (and a memorandum thereof) dated as of February 1, 2009 (the “Lease Agreement”) by and between the Agency and the Company, pursuant to which, among other things, the Company agreed to undertake and complete the Project as agent of the Agency and the Company further agreed to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency’s administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project, (C) a payment in lieu of tax agreement dated as of February 1, 2009, (the “PILOT 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; and (D) various certificates relating to the Project; and

WHEREAS, in order to finance the Project, the Company obtained from Webster Bank, National Association (the “Lender”) a loan (the “Loan”) in the amount of \$1,200,000; and

WHEREAS, the Agency joined in the execution of a mortgage and security agreement (the “Mortgage”), and an assignment of rents and leases (the “Assignment”) (the Mortgage and the Assignment, collectively, the “Lender Documents”) from the Agency and the Company to the Lender to secure the Loan, which Lender Documents granted to the Lender a collateral mortgage on and security interest in the Project Facility and assigned to the Lender all rents and leases relating to the Project Facility; and

WHEREAS, the Company requested that the Agency amend the PILOT Agreement and the other Project Documents (the “Amendment”), to extend the terms thereof to December 1, 2024; and

WHEREAS, to effectuate the amendment of the PILOT Agreement and the other Project Documents, the Agency and the Company executed and delivered an amendment to payment in lieu of tax agreement dated as of February 1, 2010 (the “First Amendment to Payment in Lieu of Tax Agreement”) and a modification agreement dated as of February 1, 2010 (the “Modification”); and

WHEREAS, the Agency has been informed by the Company that it intends to refinance the Loan with a loan in an amount not to exceed \$4,600,000 (the “Refinanced Loan”) from the Lender, which Refinanced Loan will be secured by, among other items, (A) a mortgage, a gap mortgage and/or a consolidation, modification and extension agreement from the Agency and the Company to the Lender (collectively, the “Refinanced Mortgage”), (B) a collateral assignment of leases and rents (the “Refinanced”) from the Agency and the Company to the Lender, and (C) certain other additional loan documents as may be required by the Lender (collectively, with the Refinanced Mortgage and the Refinanced Assignment, the “Refinanced Loan Documents”), to secure the Refinanced Loan; and

WHEREAS, the Company has requested that the Agency join in the execution of the Refinanced Loan Documents (the “Request”); and

WHEREAS, the Refinanced Loan Documents shall constitute a “Permitted Encumbrance” under the Lease Agreement; and

WHEREAS, the Agency will not grant Financial Assistance in the form of a mortgage recording tax exemption with respect to the recording of the Refinanced Loan Documents in Rensselaer County Clerk’s office; 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 SEQRA 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 therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

Section 2. The Agency, based upon the representations made by the Company to the Agency, hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) The execution and delivery of the Refinanced Loan Documents and the refinancing of the Loan will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of the Rensselaer County, New York and the State of New York and improve their standard of living and will serve the public purposes of Article 18-A of the General Municipal Law by preserving permanent, private sector jobs and increasing the overall number of private sector jobs in the State.

Section 3. In consequence of the foregoing, the Agency hereby determines to grant to the Lender a mortgage interest in and a lien on the Agency’s interest in the Project Facility and assign to the Lender all leases and rents relating to the Project Facility.

Section 4. Subject to (A) approval of the form of the Refinanced Loan Documents, by Special Counsel to the Agency and (B) 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 authorizes the execution and delivery by the Agency of the Refinanced Loan Documents.

Section 5. The law firm of Barclay Damon 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 6. The Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver the Refinanced Loan Documents 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 7. 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 Refinanced Loan Documents, 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 Refinanced Loan Documents binding upon the Agency.

Section 8. The Chairman, Vice Chairman and/or Executive Director of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

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

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 December 12, 2019 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 December, 2019.

  
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(Assistant) Secretary

(SEAL)