RESOLUTION AUTHORIZING EXECUTION OF SUBORDINATION AGREEMENT DAVEY'S REALTY, LLC PROJECT

A regular meeting of Rensselaer County Industrial Development Agency (the "Agency") was convened in public session in 3rd Floor Conference Room of the Quackenbush Building located at 333 Broadway in the City of Troy, Rensselaer County, New York on October 8, 2020 at 4:00 o'clock p.m., local time.

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

PRESENT:

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

Each of the members present participated in the meeting telephonically pursuant to Executive Order No. 202.1, as supplemented, issued by New York State Governor Andrew M. Cuomo, suspending provisions of Article 7 of the Public Officers Law that require public in-person access to public meetings and authorizing board members to participate in said meetings by conference call or similar service.

ABSENT:

John H. Clinton, Jr.	Chairman
Douglas Baldrey	Member

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.	Agency Counsel
Nadene E. Zeigler, Esq.	Special Counsel

The following resolution was offered by Renee Powell, seconded by Ronald Bounds, to wit:

Resolution No. 1020-06

RESOLUTION AUTHORIZING THE EXECUTION BY RENSSELAER COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN SUBORDINATION AGREEMENT IN CONNECTION WITH THE DAVEY'S REALTY, LLC PROJECT.

WHEREAS, Rensselaer County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 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, warehousing, research, commercial and industrial 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 9, 2017 (the "Closing"), the Agency entered into a lease agreement dated as of June 1, 2017 (the "Lease Agreement") by and between the Agency and Davey's Realty, LLC (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 5.6 acre parcel of land located at 97 North Greenbush Road in the Town of North Greenbush, Rensselaer County, New York (being a portion of tax map number 123.9-3-2) (the "Land"), (2) the construction on the Land of an approximately 14,000 square foot building (the "Facility") and (3) the acquisition and installation therein and thereon of certain machinery and equipment (collectively, the "Equipment"), all of the foregoing to constitute an auto body repair facility to be leased to and operated by JNJC 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 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 Company or such other person as may be designated by the Company and agreed upon by the Agency; 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, 2017 (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, 2017 (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 certain bill of sale dated as of June 1, 2017 (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 certain payment in lieu of tax agreement dated as of June 1, 2017 (the "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 and (3) a certain uniform project benefits dated as of June 1, 2017 (the "Uniform Project Benefits Agreement") relating to the granting of the Financial Assistance by the Agency to the Company, (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, by correspondence dated September 21, 2020 (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 Underlying Lease and Lease Agreement to a mortgage securing a loan in the principal amount of $4,800,000 from Keybank, National Association (the "Lender"), to the Company pursuant to a subordination agreement by and among the Agency, the Lender and the Company (the "Subordination Agreement"); 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 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 Subordination Agreement.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairman (or Vice Chairman) of the Agency is hereby authorized to execute and deliver the 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) shall approve, the execution thereof by the Chairman (or Vice Chairman) 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 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 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	ABSENT
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 annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on October 8, 2020 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") except as modified by Executive Order 202.1, as supplemented, 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, either in-person or appearing telephonically in accordance with Executive Order 202.1, as supplemented, 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 October, 2020.

Cynthia A. Hennenger
~~(Assistant)~~ Secretary

(SEAL)

EXHIBIT A

REQUEST

- SEE ATTACHED –

Lippes Mathias
Wexler Friedman LLP
ATTORNEYS AT LAW

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THOMAS D. LATIN
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September 21, 2020

Nadine E. Ziegler, Esq.
Hodgson Russ
677 Broadway, Suite 301
Albany, NY 12207

Re: Rensselaer County IDA
Lease/Leaseback Transaction
Davey's Realty, LLC

Dear Ms. Ziegler:

Davey's Realty, LLC, is refinancing four parcels with KeyBank National Association, which includes the parcel located at 97 North Greenbush Road which was the subject of the above-referenced transaction. To accomplish this refinancing, we will need the IDA to execute a Subordination Agreement. We have enclosed a proposed agreement for your review and comments.

Thank you for your consideration in this matter.

Very truly yours,

Thomas D. Latin
Enclosure
Michael Kinum, Esq. (w/ enclosure)