

**SECOND AMENDED AND RESTATED APPROVING RESOLUTION  
CAPITAL CITY PRODUCE LLC AND  
3 E INDUSTRIAL ASSOC., LLC**

A regular meeting of Rensselaer County Industrial Development Agency (the “Agency”) was convened in public session, remotely by conference call or similar service pursuant to the New York State Executive Order 202.1 (as amended and extended), on December 10, 2020 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
Renee Powell	Member

**ABSENT:**

None.

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

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

The following resolution was offered by Michael Della Rocco, seconded by Cynthia Henninger, to wit:

Resolution No. 1220-5

SECOND AMENDED AND RESTATED RESOLUTION AUTHORIZING A  
DEVIATION FROM THE AGENCY’S UNIFORM TAX EXEMPTION  
POLICY AND THE EXECUTION OF DOCUMENTS IN CONNECTION  
WITH A LEASE/LEASEBACK TRANSACTION FOR A PROJECT FOR  
CAPITAL CITY PRODUCE LLC (THE “OPERATING COMPANY”) AND 3 E  
INDUSTRIAL ASSOC., LLC (THE “REAL ESTATE HOLDING COMPANY”)  
AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

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, 3 E Industrial Assoc., LLC, a New York limited liability company (the “Real Estate Holding Company”), and Capital City Produce LLC, a New York limited liability company (the “Operating Company”), submitted an application (the “Original Application”) to the Agency, requesting that the Agency consider undertaking a project (the “Project”) for the benefit of the Real Estate Holding Company and the Operating Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 2.4 acres of real estate located at 3 E Industrial Parkway (tax map no. 111.51-1-3) in the City of Troy, Rensselaer County, New York (the “Land”), the renovation of an approximately 25,700 square foot existing commercial industrial building, together with related amenities and improvements (collectively, the “Facility”), and the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property not part of the Equipment (as such term is defined herein) (collectively, the “Facility Equipment”) (the Land, the Facility and the Facility Equipment being collectively referred to as the “Company Project Facility”), which Company Project Facility is to be leased and subleased by the Agency to the Real Estate Holding Company and further subleased by the Real Estate Holding Company to the Operating Company, and (2) the acquisition and installation of certain equipment and personal property (the “Equipment”, and together with the Company Project Facility, the “Project Facility”), all of the foregoing Project Facility to constitute a commercial facility to be used for the wholesale distribution and processing of produce and related products 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 certain sales and use taxes, mortgage recording taxes (subject to statutory limitations), real property taxes and real estate transfer taxes (collectively, the “Original Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Real Estate Holding Company or such other person as may be designated by the Real Estate Holding Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency; and

WHEREAS, the Agency's Uniform Tax Exemption Policy (the "Policy") provides a standardized method for the determination of payments in lieu of taxes for a facility similar to the Project Facility; and

WHEREAS, in connection with the Original Application, the Real Estate Holding Company and the Operating Company made a request to the Agency (the "Original PILOT Request") that the Agency deviate from its Policy with respect to real property tax payments; and

WHEREAS, by resolution adopted by the members of the Agency on May 14, 2020 (the "Original Public Hearing/Deviation Process Resolution"), the Agency authorized a public hearing with respect to the Project to be held pursuant to Section 859-a of the Act and the deviation process with respect to the proposed payment in lieu of tax agreement to be followed in compliance with the provisions of Section 874-b of the Act and the Policy; and

WHEREAS, pursuant to the authorization contained in the Original Public Hearing/Deviation Process Resolution, the Executive Director of the Agency caused notice of a Original Public Hearing of the Agency (the "Original Public Hearing") pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on June 24, 2020 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is located, caused notice of the Original Public Hearing to be posted on June 23, 2020 on the Agency's website, (C) caused notice of the Original Public Hearing to be published on June 26, 2020 in The Record, a newspaper of general circulation available to the residents of the County of Rensselaer, New York and the City of Rensselaer, Rensselaer County, New York, (D) conducted the Original Public Hearing on July 6, 2020 at 11:00 a.m., by telephone conference pursuant to Executive Order 202.1 (as amended and extended), and (E) prepared a report of the Original Public Hearing (the "Original Public Hearing Report") fairly summarizing the views presented at such Original Public Hearing and caused copies of said Original Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, the Agency caused to be mailed on June 23, 2020 a letter to Albany County, the Town of Colonie and the Village of Menands (the "Current Municipalities") notifying the Current Municipalities that the Operating Company currently leases 381 Broadway, Menands, New York 12204 (the "Current Facility") and that the Operating Company has informed the Agency that the Operating Company will "abandon" (as such term is used in Section 859-a(5)(d)) the Current Facility upon completion of the Project; and

WHEREAS, pursuant to the authorization contained in the Original Public Hearing/Deviation Process Resolution, the Executive Director of the Agency caused a letter dated June 25, 2020 (the "Original PILOT Deviation Letter") to be mailed to the chief executive officers of each Affected Tax Jurisdiction (as that term is defined in Section 854(16) of the Act), informing said individuals that the Agency would, at its meeting on July 9, 2020, consider a proposed deviation from the Policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility and the reasons for said proposed deviation; and

WHEREAS, prior to its meeting on July 9, 2020, the Agency responded to all communications and correspondence received from the Affected Tax Jurisdictions regarding the original proposed deviation from the Policy; and

WHEREAS, the Agency allowed any representatives from the Affected Tax Jurisdictions present at its meeting on July 9, 2020 to address the Agency regarding such original proposed deviation from the Policy; and

WHEREAS, by a resolution adopted by the members of the Agency on July 9, 2020, as amended and restated by a resolution adopted by the members of the Agency on August 13, 2020 (as so amended and restated, the “Original Approving Resolution”), the members of the Agency authorized the Project, the granting of the Original Financial Assistance to the Real Estate Holding Company and the Operating Company and the execution and delivery of documentation with respect thereto; and

WHEREAS, the Real Estate Holding Company and the Operating Company requested that, due to increased project costs, the Agency consider an amendment to the Original Application (the Original Application as so amended, the “Amended Application”), a copy of which Amended Application is on file at the office of the Agency, that contemplates additional financial assistance to the Real Estate Holding Company and the Operating Company in the form of increased real property tax exemption benefits (the “Additional Financial Assistance” and together with the Original Financial Assistance, the “Financial Assistance”), as more specifically set forth in the Amended Application; and

WHEREAS, in connection with the Amended Application, the Real Estate Holding Company and the Operating Company made a request to the Agency (the “Amended PILOT Request”) that the Agency deviate from its Policy with respect to real property tax payments, said proposed deviation as outlined in the schedule attached hereto as Exhibit A; and

WHEREAS, the terms of the proposed payment in lieu of tax agreement deviate from the Agency’s Policy; and

WHEREAS, by resolution adopted by the members of the Agency on October 8, 2020 (the “Second Public Hearing/Deviation Process Resolution”), the Agency considered the Amended Application and authorized a public hearing with respect to the Additional Financial Assistance to be held pursuant to Section 859-a of the Act and the deviation process with respect to the amended proposed payment in lieu of tax agreement to be followed in compliance with the provisions of Section 874-b of the Act and the Policy; and

WHEREAS, in compliance with the provisions of Section 859-a of the Act, the Second Public Hearing/Deviation Process Resolution indicated that the undertakings of the Agency contained therein are contingent upon the Agency making a determination to proceed with the Additional Financial Assistance for the Project following compliance by the Agency with the public notice and public hearing requirements set forth in Section 859-a of the Act; and

WHEREAS, pursuant to the authorization contained in the Second Public Hearing/Deviation Process Resolution, the Executive Director of the Agency caused notice of a

public hearing of the Agency (the “Additional Public Hearing” and together with the Original Public Hearing, the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Additional Financial Assistance being contemplated by the Agency with respect to the Project, to be emailed on November 30, 2020 (and mailed on December 1, 2020) to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is located, caused notice of the Additional Public Hearing to be posted on November 30, 2020 on the Agency’s website, (C) caused notice of the Additional Public Hearing to be published on December 1, 2020 in The Record, a newspaper of general circulation available to the residents of the County of Rensselaer, New York and the City of Rensselaer, Rensselaer County, New York, (D) conducted the Additional Public Hearing on December 10, 2020 at 10:00 a.m., by telephone conference pursuant to Executive Order 202.1 (as amended and extended), and (E) prepared a report of the Additional Public Hearing (the “Additional Public Hearing Report” and together with the Original Public Hearing Report, the “Public Hearing Report”) fairly summarizing the views presented at such Additional Public Hearing and caused copies of said Additional Public Hearing Report to be made available to the members of the Agency; and

WHEREAS, pursuant to the authorization contained in the Second Public Hearing/Deviation Process Resolution, the Executive Director of the Agency caused a letter dated November 24, 2020 (the “PILOT Deviation Letter”) to be mailed to the chief executive officers of each Affected Tax Jurisdiction (as that term is defined in Section 854(16) of the Act), informing said individuals that the Agency would, at its meeting on December 10, 2020, consider an amended proposed deviation from the Policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility and the reasons for said proposed deviation; and

WHEREAS, prior to the date hereof, the Agency responded to all communications and correspondence received from the Affected Tax Jurisdictions regarding the proposed deviation from the Policy; and

WHEREAS, the Agency allowed any representatives from the Affected Tax Jurisdictions present at this meeting to address the Agency regarding such proposed deviation from the Policy; and

WHEREAS, the requirements of 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 (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 collectively with the SEQR Act, “SEQRA”) applicable to the Project have been complied with; and

WHEREAS, the Agency has given due consideration to the Amended Application, and to representations by the Real Estate Holding Company and the Operating Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Real Estate Holding Company and the Operating Company to undertake the Project in Rensselaer County, New York and (B) although the completion of the Project Facility will result in the removal of a plant or facility of the proposed occupant of the Project Facility

from one area of the State to another area of the State or in the abandonment of a plant or facility of the proposed occupant of the Project Facility located in the State, the Project is reasonably necessary to induce the Real Estate Holding Company and the Operating Company to maintain the Project Facility in the State of New York and not relocate out of New York State, and to preserve the competitive position of the Operating Company in its respective industry; and

WHEREAS, the Agency desires to encourage the Real Estate Holding Company and the Operating Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Rensselaer County, New York by undertaking the Project in Rensselaer County, New York; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the “Agency Documents”): (A) a certain lease to agency (the “Lease to Agency” or the “Underlying Lease”) by and between the Real Estate Holding Company, as landlord, and the Agency, as tenant, pursuant to which the Real Estate Holding Company will lease to the Agency the Land and all improvements now or hereafter located on the Land; (B) a lease agreement (and a memorandum thereof) (the “Lease Agreement”) by and between the Agency and the Real Estate Holding Company, pursuant to which, among other things, the Real Estate Holding Company agrees to undertake the Project as agent of the Agency and the Real Estate Holding Company further agrees 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) an equipment lease agreement (the “Equipment Lease Agreement”) by and between the Agency and the Operating Company, pursuant to which the Operating Company will agree to lease the Equipment from the Agency; (D) a payment in lieu of tax agreement (the “Payment in Lieu of Tax Agreement”) by and among the Agency, the Real Estate Holding Company and the Operating Company, pursuant to which the Real Estate Holding Company and the Operating Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility; (E) a uniform project benefits agreement (the “Uniform Project Benefits Agreement”) by and among the Agency, the Real Estate Holding Company and the Operating Company regarding the granting of the financial assistance and the potential recapture of such assistance that complies with the requirements of Section 859-a(6) of the Act; (F) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Real Estate Holding Company, the Operating Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (G) a New York State Department of Taxation and Finance 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 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”); (H) if the Real Estate Holding Company and/or the Operating Company intend to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the “Mortgage”) from the Agency, the Real Estate Holding Company and the Operating Company to the Real Estate Holding Company’s and/or the Operating Company’s lender(s) with respect to the Project (the “Lender”), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the

Real Estate Holding Company and the Operating Company with respect to the Project (the “Loan”); and (I) various certificates relating to the Project (the “Closing Documents”); and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, the Real Estate Holding Company will execute and deliver to the Agency one or more bills of sale to the Agency from the Real Estate Holding Company to the Agency pursuant to which the Real Estate Holding Company will sell to the Agency the Facility Equipment, and the Operating Company will execute and deliver to the Agency one or more bills of sale to the Agency from the Operating Company to the Agency pursuant to which the Operating Company will sell to the Agency the Equipment; and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers 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 RP-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) (a “Real Property Tax Exemption Form”) relating to the Project; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, the Agency will file with the State Department of Taxation and Finance the Thirty-Day Sales Tax Reports and provide copies of the Thirty-Day Sales Tax Reports to the Real Estate Holding Company and the Operating Company; and

WHEREAS, for purposes of exemption from New York State (the “State”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight; and

WHEREAS, the Agency desires to amend and restate the Original Approving Resolution to incorporate the Additional Financial Assistance being provided with respect to the Project and documentation thereof;

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

Section 1. All action taken by the Executive Director of the Agency with respect to the Public Hearing with respect to the Project is hereby ratified and confirmed.

Section 2. The Agency, based upon the representations made by the Real Estate Holding Company and the Operating Company to the Agency in the Amended Application, hereby finds and determines that:

(A) The Agency has considered any and all responses from the Affected Tax Jurisdictions to the PILOT Deviation Letter.

(B) The Agency has reviewed and responded to all written comments received from any Affected Tax Jurisdiction with respect to the proposed deviation.

(C) The Agency has given all representatives from any Affected Tax Jurisdictions in attendance at this meeting the opportunity to address the members of the Agency regarding the proposed deviation.

(D) 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;

(E) The Project constitutes a “project,” as such term is defined in the Act;

(F) The Project site is located entirely within the boundaries of Rensselaer County, New York;

(G) It is estimated at the present time that the costs of the planning, development, acquisition, construction, and installation of the Project Facility (collectively, the “Project Costs”) will be approximately \$5,000,000;

(H) Although the completion of the Project Facility will result in the removal of a plant or facility of the proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of a plant or facility of the proposed occupant of the Project Facility located in the State, the Project is reasonably necessary to induce the Real Estate Holding Company and the Operating Company to maintain the Project Facility in the State of New York and not relocate out of New York State, and to preserve the competitive position of the Operating Company in its respective industry;

(I) (1) The Project Facility does not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project, and accordingly the Project is not prohibited by the provisions of Section 862(2)(a) of the Act, and (2) accordingly the Agency is authorized to provide financial assistance in respect of the Project pursuant to Section 862(2)(a) of the Act;

(J) The Agency, based upon its review of the following factors, finds and determines that it is desirable and in the public interest of the Agency to deviate from its UTEP and to approve the execution and delivery of the PILOT Agreement:

1. **The nature of the proposed project:** The Project will renovate an existing commercial industrial building for the operation of a wholesale distribution and produce processing business.

2. **The nature of the property before the project begins:** The existing 25,700 +/- square foot one story commercial industrial building is currently vacant.

3. **The economic condition of the area at the time of the application:** The City of Troy (the “City”) has been undergoing a revitalization, with many new businesses choosing to locate in the City. The Project location is a currently declining industrial district, centrally located with close proximity to major highways.



4. **The extent to which the project will create or retain permanent, private sector jobs:** When fully operational, the Project will create approximately 45 full-time permanent jobs within the City. These jobs will range in salary from \$28,000 to \$60,000 per year depending on experience and the skills required for the position.

5. **The estimated value of the tax exemptions to be provided:** Sales and Use Tax Exemption: \$100,000. Mortgage Recording Tax Exemption: \$31,500. Real Property Tax Exemption: \$155,662 (approximate, based on current and assumed future assessed values; actual assessed value may differ).

6. **The impact of the project and proposed tax exemptions on affected tax jurisdictions:** Redevelopment of the existing building will contribute to the revitalization and stabilization of the area by re-occupying a vacant building and will support efforts by the City and the County to promote growth in the area. The Project includes extensive interior and exterior building renovations, repair and resurface of driveways and parking areas, expansion of loading docks and landscaping, all at an approximate cost of \$1,400,000. Due to the extensive nature and cost of the renovations, it is expected that the Project will increase the assessed value of the Improvements. Assuming that the assessed value increases in the same amount as the investment in the Improvements, when the Project returns to the tax rolls after the Proposed PILOT Agreement, the affected tax jurisdictions would receive higher payments than the real estate taxes currently being paid for the existing Improvements. However, it is not possible for the Agency to predict with any certainty the impact that the Project will have on the assessed value of the Improvements. The Project Facility would also result in increased sales and use tax revenue from the Project Facility's employees making purchases in the City and the County.

7. **The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity:** As mentioned, the Project would be located in a declining industrial district. The Project would improve the character of the neighborhood and benefit nearby businesses through increased traffic. Employees working at the Project would patronize retail, commercial and professional businesses in the City and the County. The Project furthers the revitalization efforts in the City. It is likely that the Project will have a positive effect on existing and proposed businesses and economic development projects in the City and the County.

8. **The amount of private sector investment generated or likely to be generated by the proposed project:** The Real Estate Holding Company and the Operating Company anticipate investing approximately \$5 million (including the acquisition of the existing building and significant renovations to the existing building).

9. **The demonstrated public support for the proposed project:** The proposed project has received the support of the County Executive.

10. **The likelihood of accomplishing the proposed project in a timely fashion:** The Real Estate Holding Company and the Operating Company anticipate that this Project will be completed by November 2021.

11. **The effect of the proposed project upon the environment:** The Agency has determined that the anticipated effect of the proposed Project upon the environment is minimal.

12. **The extent to which the proposed project will require the provision of additional services including, but not limited to, additional educational, transportation, police, emergency medical or fire services:** The Project does not create housing and will have no impact on the utilization of the School District. It is expected that many of Project employees will use their own cars but there may be some increased demand in public transportation to the Project. The building will be sprinkled as required. Minimal demand for police, fire and emergency medical services (EMT) services is anticipated.

13. **The extent to which the proposed project will provide additional sources of revenue for municipalities and school districts in which the project is located:** As previously detailed, the Project includes extensive renovations at an approximate cost of \$1,400,000. Due to the extensive nature and cost of the renovations, it is expected that the Project will increase the assessed value of the Improvements. Assuming that the assessed value increases in the same amount as the investment in the Improvements, following the end of the Proposed PILOT Agreement, the affected tax jurisdictions would receive higher payments than the real estate taxes currently being paid for the existing Improvements. However, it is not possible for the Agency to predict with any certainty the impact that the Project will have on the assessed value of the Improvements. The Project would also result in increased sales and use tax revenue from the Project's employees making purchases in the City and the County.

14. **The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the municipality in which the project is located:** As noted earlier, the proposed Project will be located in a currently declining industrial district, and the proposed Project will improve the character of the area and benefit nearby businesses through increased traffic. The proposed Project will provide significant economic benefits to the City and the County and assist with the continuing revitalization in the City. The Project is consistent with the City's and the County's overall development and revitalization efforts.

(K) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Rensselaer County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(L) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein;

(M) The Project should receive the Financial Assistance in the form of exemptions from certain sales and use taxes, real property taxes, real estate transfer taxes and mortgage recording taxes based on the description of expected public benefits to occur as a result of this Project, as described on Exhibit B attached hereto and failure by the Real Estate Holding Company and the Operating Company to meet the expected public benefits will result in a recapture event, as described on Exhibit C attached hereto; and

(N) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 3. In consequence of the foregoing, the Agency hereby determines to: (A) accept the Lease to Agency; (B) lease the Project Facility to the Real Estate Holding Company pursuant to the Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, installed and constructed; (D) enter into the Payment in Lieu of Tax Agreement; (E) enter into the Uniform Project Benefits Agreement; (F) enter into the Section 875 GML Recapture Agreement; (G) secure the Loan by entering into the Mortgage; and (H) grant the Financial Assistance with respect to the Project.

Section 4. The Agency is hereby authorized (A) to acquire a leasehold interest in the Land and improvements pursuant to the Underlying Lease, (B) to acquire title to the Facility Equipment pursuant to a bill of sale from the Real Estate Holding Company to the Agency, (C) to acquire title to the Equipment pursuant to a bill of sale from the Operating Company to the Agency, and (D) to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisitions are hereby approved, ratified and confirmed.

Section 5. The Agency is hereby authorized to acquire, reconstruct and install the Project Facility as described in the Agency Documents, to appoint the Real Estate Holding Company and the Operating Company as agent of the Agency to undertake such acquisition, reconstruction and installation of the Project Facility as described in the Agency Documents, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, reconstruction and installation are hereby ratified, confirmed and approved.

Section 6. The Chairman (or Vice Chairman) of the Agency, with the assistance of Agency Counsel and/or Special Counsel, is authorized to negotiate and approve the form and substance of the Agency Documents.

Section 7. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, 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 the forms thereof as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 8. The Agency shall maintain records of the amount of State and local sales and use tax exemption benefits provided to the Project and each agent or Project operator and shall make such records available to the State Commissioner of Taxation and Finance (the "Commissioner") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for

the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Real Estate Holding Company's or and the Operating Company's receipt of, or benefit from, any State or local sales and use tax exemptions, the Real Estate Holding Company and the Operating Company must acknowledge and agree to make, or cause its agents and/or operators to make, all records and information regarding State and local sales and use tax exemption benefits available to the Agency upon request.

Section 9. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Real Estate Holding Company and the Operating Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from New York State sales and use taxes.

Section 10. 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 Agency 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 Agency Documents binding upon the Agency.

Section 11. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefit comprising the Financial Assistance approved herein shall not exceed **\$100,000 and shall last no longer than two years from the execution and delivery of the Agency Documents**. The Agency may consider any requests by the Real Estate Holding Company and the Operating Company for increases 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.

Section 12. Notwithstanding anything herein to the contrary, the amount of mortgage recording tax exemption benefit comprising the Financial Assistance approved herein shall not exceed **\$31,500**.

Section 13. Notwithstanding anything herein to the contrary, the amount of real property tax abatement benefit comprising the Financial Assistance approved herein shall be approximately **\$155,662**, which such amount reflects the total estimated real property tax exemptions for the Project Facility (which constitute those taxes that would have been paid if the Project Facility were on the tax rolls and not subject to the PILOT Agreement) of approximately \$463,260, less the payments in lieu of taxes of \$307,598 to be made by the Real Estate Holding Company and the Operating Company to the Affected Tax Jurisdictions with respect to the Project Facility during the term of the PILOT Agreement. The approximate amount of estimated real property tax exemptions are estimated based on an assumed assessed value of the Project Facility and assumed future tax rates of the Affected Tax Jurisdictions. The actual amount of real property tax abatement benefit is subject to change over the term of the PILOT Agreement depending on any changes to assessed value and/or tax rates of the Affected Tax Jurisdictions.

Exhibit A attached hereto reflects the annual amount of the payments in lieu of taxes to be made to the Affected Tax Jurisdictions in each year during the term of the PILOT Agreement.

Section 14. 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
Renee Powell	VOTING	AYE

The foregoing Resolution was thereupon declared duly adopted.

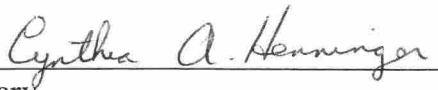
STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF RENSSELAER            )

I, the undersigned 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 10, 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"), as modified by New York State Executive Order 202.1 (as amended and extended), 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 10<sup>th</sup> day of December, 2020.

  
\_\_\_\_\_  
Secretary

(SEAL)

## EXHIBIT A

### PILOT REQUEST

The Proposed PILOT Agreement would not provide any abatements for any special assessments levied on the Project Facility. The Proposed PILOT Agreement would be for a term of 10 years, with the Real Estate Holding Company and the Operating Company making the following payments in each year as a PILOT Payment on a pro rata basis to each Affected Tax Jurisdiction as follows:

<u>Tax Year Following Commencement Date</u>	<u>PILOT Payment</u>
1	\$30,759.80
2	\$30,759.80
3	\$30,759.80
4	\$30,759.80
5	\$30,759.80
6	\$30,759.80
7	\$30,759.80
8	\$30,759.80
9	\$30,759.80
10	\$30,759.80
11 and thereafter	100% of Normal Taxes

## EXHIBIT B

### DESCRIPTION OF THE EXPECTED PUBLIC BENEFITS

In the discussions had between the Project Beneficiary and the Agency with respect to the Project Beneficiary's request for Financial Assistance from the Agency with respect to the Project, the Project Beneficiary has represented to the Agency that the Project is expected to provide the following benefits to the Agency and/or to the residents of Rensselaer County, New York (the "Public Benefits"):

Description of Benefit		Applicable to Project (indicate Yes or No)		Expected Benefit
1.	Creation of new permanent jobs	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	40 full time equivalent new jobs at the Project Facility within 1 year of the completion date.
2.	Creation of construction employment for local labor (i.e., labor resident in the area comprised of the Capital District Region)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Average 10 full time equivalent construction jobs at the Project Facility for local labor during an estimated construction period of 4 months, commencing within 3 months of the date hereof.
3.	Private sector investment	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$2 million at the Project Facility within 2 years of the date hereof.
4.	Creation of new revenues for local taxing jurisdictions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	\$200,000 of new revenues for local taxing jurisdictions with respect to the Project Facility within 5 years of the date hereof.
5.	Attract customers from outside the Economic Development Region	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Quantify by (% or number of customers, or % or amount of sales): 33% Within 4 years of the date hereof.
6.	Provide infrastructure necessary to support existing businesses or proposed businesses	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Describe: Existing urban infrastructure.
7.	Other (describe): _____	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Describe: _____ —



## EXHIBIT C

### DESCRIPTION OF THE RECAPTURE EVENTS

In connection with the Project and the granting of the Financial Assistance, the Agency and the Project Beneficiary agree that the following shall constitute recapture events with respect to the Project and the granting of the Financial Assistance:

1. Failure of the Project Beneficiary to document to the satisfaction of the Agency the commencement of the acquisition, construction, reconstruction, renovation, and/or installation of the Project Facility within 4 months of the date hereof.
2. Failure of the Project Beneficiary to document to the satisfaction of the Agency the completion of the acquisition, construction, reconstruction, renovation, and/or installation of the Project Facility within 1 year of the date hereof.
3. Failure by the Project Beneficiary to document to the satisfaction of the Agency the creation of at least 90% of the average full time equivalent local labor construction jobs at the Project Facility during the construction period described on **Exhibit B** attached hereto.
4. Failure by the Project Beneficiary to document to the satisfaction of the Agency the creation of at least 90% of the full time equivalent new jobs at the Project Facility listed on **Exhibit B** attached hereto within 2 years of the date hereof.
5. Failure by the Project Beneficiary to document to the satisfaction of the Agency that at least 90% of the private sector investment described on **Exhibit B** attached hereto occurred with respect to the Project Facility within 2 years of the date hereof.
6. Failure by the Project Beneficiary to document to the satisfaction of the Agency that the Project provided the other Public Benefits described on **Exhibit B** attached hereto within the time frames assigned to such benefits.
7. Liquidation of substantially all of the Project Beneficiary's operating assets at the Project Facility.
8. Sale, lease or other disposition of all or substantially all of the Project Facility.
9. Failure by the Project Beneficiary to comply with the annual reporting requirements or to provide the Agency with requested information.
10. Sublease (other than in the ordinary course of business) or assignment of all or part of the Project Facility in violation of any Agency Documents.
11. A change in the use of the Project Facility, other than as described on **Exhibit B** and other directly and indirectly related uses, in violation of any Agency Documents.