

**RESOLUTION AUTHORIZING ASSIGNMENT AND ASSUMPTION
HOUSE AVENUE, 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 June 10, 2021 at 4:00 o'clock p.m., local time.

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

PRESENT:

| | |
|----------------------|---------------------|
| Cynthia A. Henninger | Chair |
| Michael Della Rocco | Vice Chair |
| Ronald Bounds | Secretary/Treasurer |
| Douglas Baldrey | Member |
| John H. Clinton, Jr. | 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:

None

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

| | |
|--------------------------|------------------------|
| Robert L. Pasinella, Jr. | Executive Director |
| Robin LaBrake | Assistant |
| Peter R. Kehoe, Esq. | Special Agency Counsel |
| John E. Sweeney, Esq. | Special Agency Counsel |
| Nadene E. Zeigler, Esq. | Special Counsel |

The following resolution was offered by Douglas Baldrey, seconded by Michael Della Rocco, to wit:

Resolution No. 0621-04

RESOLUTION CONSENTING TO AND AUTHORIZING THE EXECUTION AND
DELIVERY OF CERTAIN DOCUMENTS WITH RESPECT TO THE ASSIGNMENT
AND ASSUMPTION OF THE HOUSE AVENUE, 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 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 or about August 20, 2015, (the "Closing Date"), the Agency entered into a lease agreement dated as of August 1, 2015 (the "Lease Agreement") by and between the Agency and House Avenue, LLC (the "Original Company") for the purpose of undertaking a project (the "Project") consisting of the following: (A) (1) the acquisition of an interest in an approximately 4.20 acre parcel of land located at 9th Street at House Avenue (currently being Tax Map # 90.63-4-1.1) in the City of Troy, Rensselaer County, New York (the "Land"), (2) the construction on the Land of an approximately 74 unit multi-family senior housing facility with parking (the "Facility") and (3) the acquisition and installation therein and thereon of certain machinery and equipment, including but not limited to, furniture and fixtures (collectively the "Equipment") for use as a senior housing facility and other directly or indirectly related activities (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 Original Company pursuant to the Lease Agreement; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the "Closing"), (A) the Original Company executed and delivered to the Agency (1) a certain lease to Agency dated as of August 1, 2015 (the "Lease to Agency") from the Original Company to the Agency, (2) a certain license agreement dated as of August 1, 2015 (the "License to Agency") by and between the Original Company, as licensor, and the Agency, as licensee, pursuant to which the Original 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 Original Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement, (3) a bill of sale dated as of August 1, 2015 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Original Company in the Equipment and (4) a payment in lieu of tax agreement dated as of August 1, 2015 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Original Company, pursuant to which the Original Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility and (B) the Agency (1) mailed to the assessor and 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 and (2) executed and delivered to the Original 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 (collectively, with the Lease Agreement, the "Basic Documents"); and

WHEREAS, on or about June 4, 2021, the Original Company informed the Agency pursuant to the attached request (the "Request"), that the Original Company desires to convey the Project Facility and its interests in the Basic Documents to Overlook Revive, LLC, a limited liability company organized and existing under the laws of the State of New York (the "New Company") and, in connection with such conveyance, provide for the assignment of the Basic Documents from the Original Company to the New Company, as described in the Request; and

WHEREAS, the Lease Agreement provides that the Original Company is prohibited from selling, leasing, transferring or otherwise conveying any part of the Project Facility without the prior written consent of the Agency; and

WHEREAS, in connection with the conveyance of the Project Facility, the Original Company and the New Company have also requested that the Agency execute documents providing for the following (the "Conveyance and Assignment Documents"): the consent by the Agency of the conveyance of the Project Facility and the assignment and assumption of the Basic Documents from the Original Company to the New Company; and

WHEREAS, in connection with the Request, the New Company will be refinancing the existing mortgage loan in the original principal sum of \$5,300,000 (the "Initial Loan"), which Initial Loan was secured by a mortgage from First Niagara Bank, N.A. (the "Initial Lender") dated August 1, 2015 (the "Initial Mortgage") from the Agency and the Original Company to the Initial Lender and the New Company would like the Agency to enter into a refinanced mortgage from Prudential Affordable Mortgage Company, LLC (the "Lender") and any other financing documents in connection thereto (collectively, the "Loan Documents") to secure a loan in the approximate amount of \$7,213,000 (the "Loan") from the Lender to the New Company; 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 execution and delivery of the Conveyance and Assignment Documents and the Loan Documents; and

WHEREAS, pursuant to SEQRA, the Agency has reviewed the Request in order to make a determination as to whether the execution and delivery of the Conveyance and Assignment Documents and the Loan Documents are subject to SEQRA, and it appears that the Request is not an "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) Pursuant to SEQRA, the approval of the Request is not an "Action" under SEQRA and therefore is not subject to SEQRA review by the Agency.

(B) The Agency will **not** be granting any mortgage recording tax exemption relating to the Request.

(C) 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 Purchaser, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. The Agency hereby approves (A) the assignment to, and assumption by, the New Company of all of the Original Company’s interest in the Project Facility, and the Basic Documents, including but not limited to the benefits of the Lease Agreement and the Payment in Lieu of Tax Agreement, (B) the assumption by the New Company of all obligations of the Original Company under the Basic Documents pursuant to an assignment and assumption agreement (the “Assignment and Assumption Agreement”) and (C) the execution of the Loan Documents; subject in each case, however to the following conditions: (1) receipt by Special Counsel to the Agency of certified copies of the formation documents of the New Company from the New York State Department of State; (2) receipt of confirmation that all real property taxes and payments in lieu of taxes required by the Project have been satisfied; (3) evidence of current certificates of insurance acceptable to the Agency; (4) receipt of confirmation from Agency counsel that no modifications shall result from the Request that result in any new tax relief for the Project (such as an extension of the term, increase in abatement or change in the Payment in Lieu of Tax Agreement); (5) receipt by Special Counsel of the written consent of the Initial Lender any other holder of any current mortgage on the Project Facility OR evidence that there are no security documents filed relating to the Project; (6) compliance with the terms and conditions contained in the Assignment and Assumption Agreement and the Basic Documents; (7) approval by counsel to the Agency of the (a) form of the documents to be executed by the Agency in connection with the assignment and assumption, including the Assignment and Assumption Agreement (collectively, the “Assignment Documents”) and (b) Loan Documents; and (8) receipt by the Agency of its administrative fee relating to the Request, as reviewed by the Chair, Agency Counsel and Special Counsel, and all fees and expenses incurred by the Agency with respect to the Request, including the fees and expenses incurred by Agency counsel with respect thereto.

Section 3. Subject to (A) satisfaction of the conditions contained in Section 2 hereof, including the condition that no modifications provide any new tax relief for the Project (such as an extension of the term, increase in abatement or change in the Payment in Lieu of Tax Agreement); and (B) the execution and delivery of the Assignment Documents and the Loan Documents by the other parties thereto, the Chair (or Vice Chair) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Assignment Documents and the Loan 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 substantially the forms thereof approved by Counsel to the Agency, with such changes, variations, omissions and insertions as the Chair (or Vice Chair) shall approve, the execution thereof by the Chair (or Vice Chair) 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 Request, 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 Request.

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:

| | | |
|----------------------|--------|-----|
| Cynthia A. Henninger | VOTING | YES |
| Michael Della Rocco | VOTING | YES |
| Ronald Bounds | VOTING | YES |
| Douglas Baldrey | VOTING | YES |
| John H. Clinton, Jr. | VOTING | YES |
| Renee Powell | VOTING | YES |

The foregoing Resolution was thereupon declared duly adopted.

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

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 June 10, 2021, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such resolution set forth 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 _____ day of June, 2021.

Ronald W. Bounds

 (~~Assistant~~) Secretary

(S E A L)

EXHIBIT A

REQUEST

- See Attached -

Law Office of Debra J. Lambek PLLC

302 Washington Avenue Extension
Albany, New York 12203

Debra J. Lambek
Counsel
(518) 862-9133 Ext. 4225
djambek@lambeklaw.com

June 4, 2021

Via Email to rpasinella@rensco.com

Robert L. Pasinella Jr.
Executive Director
Rensselaer County Industrial Development Agency
County Office Building
1600 Seventh Avenue
Troy, New York 12180

Re: Rensselaer County Industrial Development Agency ("Agency")
with House Avenue LLC ("Company")
104 W Sunnyside Way (f/k/a 9th Street at House Avenue), Troy ("Project")
Assignment of Project to Overlook Revive LLC

Dear Mr. Pasinella:

The above referenced Project was approved by the Agency in August of 2015. The Agency granted the Project a payment in lieu of tax agreement (PILOT Agreement) which is still in effect. We are in the process of refinancing the existing mortgage for the Project. As part of the refinancing, the Project will be transferred from the existing Company, wholly owned by David Kwiat to a newly formed limited liability company which will also be wholly owned by David Kwiat. Attached to this letter is the existing organization chart for the Company and an organization chart for the New Company.

We are requesting the Agency to approve the refinancing of the existing mortgage loan. The new lender is Prudential Affordable Mortgage Company, LLC and the amount of the financing is \$7,213,000. There is no financial assistance being requested by the Company in connection with this request. We are further requesting the Agency approve the transfer of the owner of the Project from the Company to the New Company.

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Law Office of Debra J. Lambek PLLC

If you require any additional information to review this request, please let me know.
Thank you.

Very truly yours,

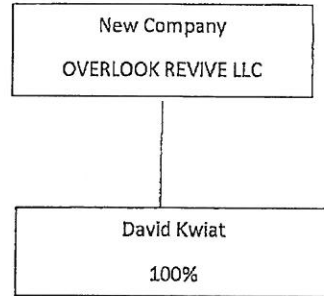
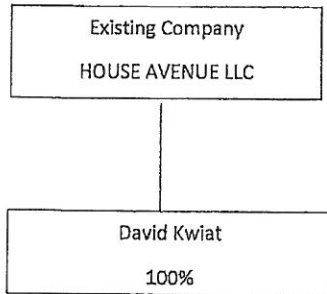


Debra J. Lambek
Counsel

DJL:mml

cc: David Kwiat (Via email to dpmleasing@protonmail.com)
Nadene Zeigler, Esq. (Via email to nzeigler@hodgsonruss.com)

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Selected Entity Name: OVERLOOK REVIVE, LLC
Selected Entity Status Information

Current Entity Name: OVERLOOK REVIVE, LLC
DOS ID #: 5917979
Initial DOS Filing Date: JANUARY 14, 2021
County: MONTGOMERY
Jurisdiction: NEW YORK
Entity Type: DOMESTIC LIMITED LIABILITY COMPANY
Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

OVERLOOK REVIVE, LLC
4879 STATE HWY 30
SUITE 3, PMB #316
AMSTERDAM, NEW YORK, 12010

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include

the name(s) and address(es) of the original members, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

| # of Shares | Type of Stock | \$ Value per Share |
|--------------------------|---------------|--------------------|
| No Information Available | | |

*Stock information is applicable to domestic business corporations.

Name History

| Filing Date | Name Type | Entity Name |
|--------------|-----------|----------------------|
| JAN 14, 2021 | Actual | OVERLOOK REVIVE, LLC |

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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