

FINAL AUTHORIZING RESOLUTION
(165 Overlook Road, LLC 2018 Project)

At a special meeting of the Dutchess County Industrial Development Agency (the "Agency"), held at 8:00 a.m. at Three Neptune Road, Poughkeepsie, New York on the 27th day of June, 2018, the following members of the Agency were:

PRESENT: Mark Doyle, Secretary/Treasurer
Stacey M. Langenthal
Donald R. Sagliano
Alfred D. Torreggiani

ABSENT: Timothy Dean, Vice Chairman
Charles Daniels III, Chairman

ALSO PRESENT: Sarah Lee, Executive Director
Marilyn Yerks, Chief Financial Officer
Donald Cappillino, Counsel
Elizabeth A. Cappillino, Counsel

After the meeting had been duly called to order, the Secretary announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of title to, or a leasehold interest in, a certain industrial development facility (165 Overlook Road, LLC 2018 Facility) and the leasing of the facility to 165 Overlook Road, LLC as more particularly described below:

RESOLUTION OF THE DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY APPROVING THE ACQUISITION, CONSTRUCTION, IMPROVEMENT, RECONSTRUCTION, REPAIR, RENOVATION, INSTALLATION, FURNISHING AND EQUIPPING OF A CERTAIN INDUSTRIAL DEVELOPMENT FACILITY FOR 165 OVERLOOK ROAD, LLC AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF RELATED DOCUMENTS.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, 165 Overlook Road, LLC, a New York limited liability company duly organized and validly existing under the laws of the State of New York (the "**Company**") submitted an application to the Agency requesting the Agency provide financial assistance ("**Financial Assistance**") for a project consisting of (a) the acquisition of an approximately 16-acre parcel located at 165 Overlook Road in the Town of LaGrange, County of Dutchess, State of New York, bearing Tax Map Grid No. 133400-6261-02-896803-0000 (the "**Land**"), the construction, improvement, reconstruction, repair, renovation, installation, furnishing and

equipping of structures located thereon, including the following: (i) the renovation of an existing 40,991 square-foot, four-story structure for multi-unit residential use; (ii) the renovation of an existing 4,656 square-foot, two-story structure for multi-unit residential use; (iii) the construction of one 9,865 square-foot, three-story structure, one 7,538 square-foot, two-story structure, one 14,607 square-foot, three-story structure, one 11,282 square-foot, two-story structure, one 12,675 square-foot, three-story structure, and one 10,812 square-foot, three-story structure, all to be used as multi-unit residential buildings; (iv) the construction of a 1,222 square-foot, one-story structure to be used as a maintenance, storage and utility building; and (v) the construction of a 1,980 square-foot, one-story structure to be used as a garage (collectively, the **“Improvements”**) and the acquisition and installation therein of certain equipment and personal property (the **“Equipment”**); and, together with the Land and the Improvements, the **“Facility”**), which Facility is to be leased and subleased by the Agency to the Company and which Facility is to be used by the Company as a multi-unit residential complex (the **“Project”**); and

WHEREAS, the Agency by resolution duly adopted on May 16, 2018 (the **“Preliminary Resolution”**), decided to proceed under the provisions of the Act; and

WHEREAS, the Agency requires, as a condition to its issuance of Financial Assistance, that the Company lease that portion of the Facility consisting of the Land and Improvements to the Agency pursuant to the terms of a Company Lease Agreement dated as of July 1, 2018 (the **“Company Lease”**) by and between the Company and the Agency; and

WHEREAS, the Company has agreed to transfer title to the Equipment to the Agency pursuant to a Bill of Sale, dated the Closing Date (the **“Bill of Sale”**); and

WHEREAS, the Agency has agreed to sublease and lease the Facility to the Company pursuant to a certain Lease and Project Agreement dated as of July 1, 2018 (the **“Lease Agreement”**) by and between the Agency and the Company; and

WHEREAS, the payment-in-lieu-of-tax (**“PILOT”**) provisions of the Lease Agreement deviate from the Agency’s Uniform Tax Exemption Policy, but the Company has provided proof that the Town of LaGrange and the Arlington Central School District have consented to the PILOT terms; and

WHEREAS, the Company has agreed with the Agency, on behalf of the Agency and as the Agency’s agent, to complete the Project Work (as defined in the Lease Agreement) substantially in accordance with the Plans and Specifications (as defined in the Lease Agreement); and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company consistent with the policies of the Agency, in the form of (i) exemptions from sales and use taxes in an amount not to exceed \$597,185.50 in connection with the purchase or lease of equipment, building materials, services or other personal property with the respect to the Facility; (ii) exemptions from mortgage recording taxes for one or more mortgages securing an amount presently estimated to be \$20,000,000.00 but not to exceed \$25,000,000.00 in connection with the Project Work; and (iii) abatement of real property taxes on the Facility as set forth in the PILOT Schedule attached as Exhibit A hereof; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Project has undergone a coordinated review under SEQRA by the Town of LaGrange Planning Board (the “**Planning Board**”), as Lead Agency under SEQRA; and

WHEREAS, by resolution dated September 20, 2005, the Planning Board issued a Negative Declaration and Determination of Non-Significance (the “**Negative Declaration**”) with the reasons for its determination stated therein; and

WHEREAS, the Agency hereby adopts the reasoning set forth in the Negative Declaration and hereby determines that the Project will not have a “significant impact” or “significant effect” on the environment as defined under SEQRA; and

WHEREAS, in compliance with §859-a of the Act, the Agency on June 14, 2018 held a public hearing on the grant of financial assistance as set forth herein following publication in the *Poughkeepsie Journal* on May 29, 2018 of a notice of the public hearing; and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

NOW, THEREFORE, BE IT RESOLVED, by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1. The Agency hereby finds and determines:

(a) The Agency hereby adopts the reasoning set forth in the Planning Board’s Negative Declaration and hereby determines that the Project will not have a “significant impact” or “significant effect” on the environment as defined under SEQRA.

Section 2. The Agency further hereby finds and determines:

(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 Facility constitutes a “project”, as such term is defined in the Act; and

(c) The public hearing held by the Agency on June 14, 2018, concerning the grant of Financial Assistance as set forth herein and the nature and location of the Facility was duly held in accordance with the laws of the State of New York, including but not limited to the giving of public notice of the meeting a reasonable time before the meeting and affording a reasonable opportunity for persons with differing views to be heard on Agency’s providing the financial assistance contemplated herein and the location and nature of the Facility; and

(d) The Project Work and the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Dutchess County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(e) The Project Work is reasonably necessary to induce the Company to maintain and expand their business operations in the State of New York and to discourage the Company from removing their facility to a location outside the state and to preserve the competitive position of the Company in their respective industry; and

(f) Based upon representations of the Company and Company Counsel, the Facility conforms with the local zoning laws and planning regulations of Dutchess County and all regional and local land use plans for the area in which the Facility is located; and

(g) It is desirable and in the public interest for the Agency to approve the requested Financial Assistance to this Facility; and

(h) The Company Lease will be an effective instrument whereby the Agency leases the Facility from the Company; and

(i) The Lease Agreement will be an effective instrument whereby: (1) the Agency leases and subleases the Facility to the Company; (2) the Agency and the Company set forth the terms and conditions of their agreement regarding the Company's payments-in-lieu of real property taxes; (3) the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and (4) the Agency and the Company set forth the circumstances in which the Agency may recapture some or all of the benefits granted to the Company in the event any enumerated Recapture Event (as defined therein) occurs.

Section 3. Subject to (i) the Company executing the Company Lease, the Lease Agreement, and the Bill of Sale and (ii) the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Facility satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the Project Work and hereby appoints the Company as the true and lawful agent of the Agency.

Section 4. In consequence of the foregoing, the Agency hereby determines to: (i) sublease the Facility to the Company pursuant to the Lease Agreement, (ii) execute, deliver and perform the Lease Agreement; and (iii) execute and deliver the Company Lease.

Section 5. The Agency is hereby authorized to acquire a leasehold interest in the real property and personal property described in Exhibit A and Exhibit B, respectively, to the Lease Agreement 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 are hereby approved, ratified and confirmed.

Section 6. The form and substance of the Company Lease and the Lease Agreement (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated and renamed) are hereby approved.

Section 7. Recapture Provisions. The Agency shall enjoy certain recapture rights under the terms and conditions of the Lease Agreement, of which Section 5.4 relating to recapture rights is attached hereto and made a part hereof as Exhibit B, upon the occurrence of a Recapture Event as defined therein.

Section 8. Based upon the representation and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agents, to make purchases of goods and services relating to the Facility and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately \$7,350,000.00, which result in New York State and local sales and use tax exemption benefits (“**sales and use tax exemption benefits**”) not to exceed \$597,185.50. The Agency agrees to consider any requests by the 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, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 9.

(a) The Chairman, Vice Chairman, any member of the Agency or the Executive Director are hereby authorized, on behalf of the Agency, to execute and deliver the Company Lease and the Lease Agreement (including any Mortgage and accompanying Assignment of Leases and Rents and Consents to Assignment and any other financing documents reasonably approved as to form and substance by the Executive Director and counsel to the Agency), all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, any member of the Agency or the Executive Director shall approve, and such other related documents as may be, in the judgment of the Executive Director and Agency Counsel and Transaction Counsel, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Vice Chairman, any member of the Agency or the Executive Director of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, any member of the Agency and the Executive Director of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement). The Agency hereby appoints each Member of the Agency, Agency Counsel and Transaction Counsel to serve as an Assistant Secretary of the Agency for purposes of this transaction.

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, 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. This resolution shall take effect immediately.

The following resolution was duly moved by Stacey M. Langenthal, seconded by Alfred D. Torreggiani, discussed and adopted with the following members voting:

Charles Daniels, III, Chairman	Being	ABSENT
Timothy Dean, Vice Chairman	Being	ABSENT
Mark Doyle, Secretary/Treasurer	VOTING	“Aye”
Stacey M. Langenthal	VOTING	“Aye”
Donald R. Sagliano	VOTING	“Aye”
Alfred D. Torreggiani	VOTING	“Aye”

Adopted: June 27, 2018

EXHIBIT A

PILOT SCHEDULE

The amount of payments-in-lieu-of-taxes payable annually by the Company will be allocated among the Town of LaGrange, the Arlington Central School District and Dutchess County, pro-rata, based on their tax rates for the particular year.

The Company shall make payments-in-lieu-of-taxes equal to the full amount of taxes that would have been levied upon the Facility if the Facility were owned by the Company and the Agency had no ownership interest but reduced by the following exemption percentage:

PILOT Year	Percentage
1	50%
2	50%
3	50%
4	50%
5	50%
6	45%
7	45%
8	40%
9	35%
10	30%
11	25%
12	20%
13	15%
14	10%
15	5%
thereafter	0%

EXHIBIT B

EXCERPT FROM LEASE AGREEMENT

Section 5.4 Recapture of Agency Benefits.

(a) It is understood and agreed by the parties hereto that the Agency is entering into this Lease Agreement in order to provide financial assistance to the Company for the Facility and to accomplish the public purposes of the Act. In consideration therefor, the Company hereby agrees as follows:

- (i) If there shall occur a Recapture Event prior to the Completion Date or within the first (1st) or second (2nd) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, one hundred percent (100%) of the Recaptured Benefits (as defined below);
- (ii) If there shall occur a Recapture Event during the third (3rd) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ninety percent (90%) of the Recaptured Benefits;
- (iii) If there shall occur a Recapture Event during the fourth (4th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, eighty percent (80%) of the Recaptured Benefits;
- (iv) If there shall occur a Recapture Event during the fifth (5th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, seventy percent (70%) of the Recaptured Benefits;
- (v) If there shall occur a Recapture Event during the sixth (6th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, sixty percent (60%) of the Recaptured Benefits;
- (vi) If there shall occur a Recapture Event during the seventh (7th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, fifty percent (50%) of the Recaptured Benefits;

- (vii) If there shall occur a Recapture Event during the eighth (8th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, forty percent (40%) of the Recaptured Benefits; and
- (viii) If there shall occur a Recapture Event during the ninth (9th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, thirty percent (30%) of the Recaptured Benefits; and
- (ix) If there shall occur a Recapture Event during the tenth (10th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, twenty percent (20%) of the Recaptured Benefits; and
- (x) If there shall occur a Recapture Event during the eleventh (11th) year after the Completion Date, the Company shall pay to the Agency, or to the State of New York, if so directed by the Agency (except as otherwise specified below) as a return of public benefits conferred by the Agency, ten percent (10%) of the Recaptured Benefits; and
- (xi) If there shall occur a Recapture Event during the twelfth (12th) year after the Completion Date, the Company shall not be obligated to pay to the Agency, or to the State of New York, any of the Recaptured Benefits; and

(b) The term “**Recaptured Benefits**” shall mean all direct monetary benefits, tax exemptions and abatements and other financial assistance, if any, derived solely from the Agency’s participation in the transaction contemplated by this Lease Agreement including, but not limited to, the amount equal to 100% of:

- (i) the Mortgage Recording Tax Exemption; and
- (ii) Sales Tax Exemption savings realized by or for the benefit of the Company, including any savings realized by any Agent pursuant to the Lease Agreement and each Sales Tax Agent Authorization Letter issued in connection with the Facility (the “**Company Sales Tax Savings**”); and
- (iii) real property tax abatements granted pursuant to Section 5.1 hereof (the “**Real Property Tax Abatements**”);

which Recaptured Benefits from time to time shall upon the occurrence of a Recapture Event in accordance with the provisions of subsection (c) below and the declaration of a Recapture Event by notice from the Agency to the Company be payable

directly to the Agency or the State of New York if so directed by the Agency within thirty (30) days after such notice.

(c) The term “**Recapture Event**” shall mean any of the following events:

(1) The occurrence and continuation of an Event of Default under this Lease Agreement (other than as described in clause (4) below or in subsection (e) below) which remains uncured beyond any applicable notice and/or grace period, if any, provided hereunder; or

(2) The Facility shall cease to be a “project” within the meaning of the Act, as in effect on the Closing Date, through the act or omission of the Company; or

(3) The sale of the Facility or closure of the Facility and/or departure of the Company from Dutchess County, except as due to casualty, condemnation or force majeure as provided in subsection (e) below or as provided in Section 9.3 hereof; or

(4) Failure of the Company to create or cause to be maintained at least ninety percent (90%) of the number of FTE jobs at the Facility as provided in Section 8.11 of the Lease Agreement, which failure is not reflective of the business conditions of the Company or the subtenants of the Company, including without limitation loss of major sales, revenues, distribution or other adverse business developments and/or local, national or international economic conditions, trade issues or industry wide conditions; or

(5) Any significant deviations from the Project Application Information which would constitute a significant diminution of the Company’s activities in, or commitment to Dutchess County, New York; or

(6) The Company receives Sales Tax Savings in connection with the Project Work in excess of the Maximum Company Sales Tax Savings Amount; provided, however, that the foregoing shall constitute a Recapture Event with respect to such excess Sales Tax Savings only. It is further provided that failure to repay the Sales Tax Savings within thirty (30) days shall constitute a Recapture Event with respect to all Recapture Benefits.

(d) Reserved.

(e) Furthermore, notwithstanding the foregoing, a Recapture Event shall not be deemed to have occurred if the Recapture Event shall have arisen as a result of (i) a “force majeure” event (as more particularly defined in Section 10.1(b) hereof), (ii) a taking or condemnation by governmental authority of all or part of the Facility, or (iii) the inability or failure of the Company after the Facility shall have been destroyed or damaged in whole or in part (such occurrence a “**Loss Event**”) to rebuild, repair, restore or replace the Facility to substantially its condition prior to such Loss Event, which inability or failure shall have arisen in good faith on the part of the Company or any of its affiliates so long as the Company or any of its affiliates have diligently and in good faith using commercially reasonable efforts pursued the rebuilding, repair, restoration or replacement of the Facility or part thereof.

(f) The Company covenants and agrees to furnish the Agency with written notification (i) within sixty (60) days of the end of each Tax Year of the number of FTEs located at the Facility for such Tax Year, and (ii) within thirty (30) days of actual notice of any facts or circumstances which would likely lead to a Recapture Event or constitute a Recapture Event hereunder. The Agency shall notify the Company of the occurrence of a Recapture Event hereunder, which notification shall set forth the terms of such Recapture Event.

(g) In the event any payment owing by the Company under this Section shall not be paid on demand by the Agency, such payment shall bear interest from the date of such demand at a rate equal to one percent (1%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, until the Company shall have made such payment in full, together with such accrued interest to the date of payment, to the Agency (except as otherwise specified above).

(h) The Agency shall be entitled to deduct all reasonable out of pocket expenses of the Agency, including without limitation, reasonable legal fees, incurred with the recovery of all amounts due under this Section 5.4, from amounts received by the Agency pursuant to this Section 5.4.

(i) The Company acknowledges that Section 5.4 is intended to reflect the Agency's "Policy on Maintaining Performance Based Incentives (MPBI)" a copy of which is attached hereto as Exhibit G and made a part hereof. In the event of a conflict between the provisions of Section 5.4 and the provisions set forth on Exhibit G, the provisions set forth on Exhibit G shall control.