

**PRELIMINARY RESOLUTION
(Shop-Rite Supermarkets, Inc. 2019 Project)**

A regular meeting of the Dutchess County Industrial Development Agency was convened in public session on October 9, 2019 at 8:00 a.m., local time, at the office of the Dutchess County Industrial Development Agency, Three Neptune Road, Poughkeepsie, New York.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Timothy Dean, Chairman
Mark Doyle, Vice Chairman
Stacey M. Langenthal, Secretary/Treasurer
Alfred D. Torreggiani
Donald R. Sagliano
Kathleen M. Bauer
Ronald J. Piccone, II

ABSENT:

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

On motion duly made by Alfred D. Torreggiani and seconded by Kathleen M. Bauer, the following resolution (the "**Resolution**") was placed before the members of the Dutchess County Industrial Development Agency:

Resolution (i) Taking official action toward the issuance of financial assistance to Shop-Rite Supermarkets, Inc. (Shop-Rite Supermarkets, Inc. 2019 Project) in the form of potential exemption from sales and use taxes; and (ii) authorizing the execution and delivery of an agreement by and between the Agency and Shop-Rite Supermarkets, Inc. with respect to such financial assistance.

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 Dutchess County Industrial Development Agency (the "**Agency**") was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, renovating and equipping certain facilities as authorized by the Act; and

WHEREAS, Shop-Rite Supermarkets, Inc., a New Jersey corporation authorized to transact business in New York, having offices at 176 North Main Street, Florida, New York 10921 (the "**Company**"), has submitted an application to the Agency requesting the Agency provide certain "financial assistance" (within the meaning of the Act) in connection with a project

(the “**Project**”) consisting of the following: (A) the acquisition, leasing, furnishing, equipping, and installing of certain interests in personal property (the “**Equipment**”) used for the construction, installation, furnishing and equipping of an approximately 65,000 square foot building located on an approximately 1.5-acre parcel of land located at 3532 North Road (Route 9), Poughkeepsie, New York for use by the Company as a supermarket, which acquisition, leasing, furnishing, equipping and installation of certain equipment and personal property is at a cost estimated to be Twelve Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$12,750,000.00); (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 (the “**Financial Assistance**”); and (C) the lease (with an obligation to purchase) or sale of the Equipment to the Company or such other person as may be designated by the Company and agreed upon by the Agency and sublease by the Agency to the Company; and

WHEREAS, the Company is a tenant of EFG/Saber Heritage SC, LLC (the “Landlord”) and the Project is part of the Hudson Heritage 2019 Project previously approved by the Agency and subject to a straight-lease transaction between the Landlord and the Agency whereby the Agency certain financial assistance to the Landlord;

WHEREAS, the Project includes the following, as they relate to the construction, installation, furnishing, equipping, and completion of such Project, whether or not any materials or supplies described below are incorporated into or become an integral part of such Project: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction of the Project; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction of the Project and installation of the equipment; and

WHEREAS, the Agency has given due consideration to the application submitted by the Company, in which it is represented by the Company that the Financial Assistance for the Project will not result in the abandonment of a facility of the Company located elsewhere in the State of New York; and

WHEREAS, the Project will include facilities or property that are used in making “retail sales,” as defined within Section 862(2)(a) of the Act, and the Agency’s final approval of the provision of Financial Assistance for the Project is contingent upon the Agency’s finding that the Project complies with Section 862(2)(a) of the Act; 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 Agency is required to determine whether the Project may have a significant effect on the environment and therefore require the preparation of an Environmental Impact Statement; and

WHEREAS, the Agency has yet to make a determination of environmental significance on this application but will do so prior to its grant of any financial assistance; and

WHEREAS, the Agency has not yet held a public hearing pursuant to §859-a of the Act; and

WHEREAS, although the resolution authorizing the Financial Assistance has not yet been presented for approval by the Agency, a Preliminary Agreement relative to the proposed Financial Assistance has been presented for approval by the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Dutchess County Industrial Development Agency, as follows:

1. Based upon the representations made by the Company to the Agency, the Agency hereby finds and determines that:

- (a) The Project constitutes a “project” within the meaning of the Act;
- (b) The Financial Assistance will not result in the abandonment of a facility of the Company located elsewhere in the State of New York;
- (c) The Financial Assistance will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Dutchess County, New York, and improve their standard of living, and thereby serve the public purposes of the Act; and
- (d) It is desirable and in the public interest for the Agency to assist the Company by granting the Financial Assistance.

2. Subject to the conditions set forth in ¶3 of this Resolution, the Agency will:

- (a) acquire a leasehold interest in the Project; and
- (b) sublease the Project to the Company pursuant to agreements by and between the Agency and the Company.

3. The provision of Financial Assistance herein, as contemplated by ¶2 of this Resolution, shall be subject to:

- (a) the execution and delivery by the Company of the Preliminary Agreement attached hereto as Exhibit “A” setting forth certain conditions for the provision of the Financial Assistance;
- (b) a finding by the Agency, after review of all relevant information, that the Project complies with Section 862(a) of the Act; and
- (c) compliance with SEQRA;

4. The form and substance of a proposed Preliminary Agreement (in substantially the form presented to this meeting) by and between the Agency and the Company setting forth the undertakings of the Agency and the Company with respect to the provision of Financial Assistance is hereby approved. The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Preliminary Agreement and the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency hereto and to attest to this meeting, with such changes in terms and conditions as the Executive Director shall constitute conclusive evidence of such approval.

5. Pursuant to §875(3) of the Act and under the Agency policy concerning Maintaining Performance Based Incentives (the "MPBI"), the Agency may recover, recapture or receive from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; and/or (iv) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project in the manner approved by the Agency in connection with the Project (collectively, items (i) through (iv) hereby defined as a "**Recapture Event**"). The MPBI Policy provides for the return of other incentives as set forth therein.

6. As a condition precedent of receiving sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

7. The law firm of Nixon Peabody LLP, Rochester, New York, is hereby appointed Transaction Counsel to the Agency in relation to the provisions of Financial Assistance.

8. Counsel to the Agency and Transaction Counsel for the Agency are hereby authorized to work with counsel to the Company and others to prepare for submission to the Agency all documents necessary to effect the authorization and provision of Financial Assistance. The Company shall be responsible for the fees of Agency, Agency's Counsel and Transaction Counsel in relation to this Project and the provision of Financial Assistance.

9. The Agency hereby approves and authorizes the following actions by the Chairman of the Agency, prior to the granting of any Financial Assistance with respect to the

Project, after consultation with counsel to the Agency: (i) to establish the time, date and place for a public hearing of the Agency to hear all persons interested in the Project and the proposed Financial Assistance being contemplated by the Agency with respect to the Project, said public hearing to be held in the Town of Poughkeepsie, Dutchess County, New York; (ii) to cause notice of such public hearing to be given to the public by publishing a notice in accordance with the applicable provisions of the N.Y. General Municipal Law, as well as, at the same time, provide notice of the hearing to the chief executive officer of each affected tax jurisdiction; (iii) to conduct such public hearing or cause such hearing to be conducted by his designee; and (iv) to cause a stenographic transcript of said public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency.

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

11. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was put to vote on roll call, which resulted as follows:

Timothy Dean, Chairman	VOTING	“Aye”
Mark Doyle, Vice Chairman	VOTING	“Aye”
Stacey M. Langenthal, Secretary/Treasurer	VOTING	“Aye”
Alfred D. Torreggiani	VOTING	“Aye”
Donald R. Sagliano	VOTING	“Aye”
Kathleen M. Bauer	VOTING	“Aye”
Ronald J. Piccone, II	VOTING	“Aye”

The Resolution was thereupon declared duly adopted.

Adopted: October 9, 2019

PRELIMINARY AGREEMENT
(Shop-Rite Supermarkets, Inc. 2019 Project)

THIS PRELIMINARY AGREEMENT (the “Preliminary Agreement”), made as of October 9, 2019 between the **DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation, organized and existing under the General Municipal Law of the State of New York, having offices at Three Neptune Road, Poughkeepsie, New York 12601 (the “**Agency**”), and **SHOP-RITE SUPERMARKETS, INC.**, a New Jersey corporation authorized to transact business in New York, having offices at 176 North Main Street, Florida, New York 10921 (the “**Company**”).

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 to provide financial assistance for the purpose of, among other things, acquiring, renovating and equipping certain facilities as authorized by the Act; and

WHEREAS, Shop-Rite Supermarkets, Inc., a New Jersey corporation authorized to transact business in New York, having offices at 176 North Main Street, Florida, New York 10921 (the “**Company**”), has submitted an application to the Agency requesting the Agency provide certain “financial assistance” (within the meaning of the Act) in connection with a project (the “**Project**”) consisting of the following: (A) the acquisition, leasing, furnishing, equipping, and installing of certain interests in personal property (the “**Equipment**”) used for the construction, installation, furnishing and equipping of an approximately 65,000 square foot building located on an approximately 1.5-acre parcel of land located at 3532 North Road (Route 9), Poughkeepsie, New York for use by the Company as a supermarket, which acquisition, leasing, furnishing, equipping and installation of certain equipment and personal property at a cost estimated to be Twelve Million Seven Hundred Fifty Thousand and 00/100 Dollars (\$12,750,000.00); (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 (the “**Financial Assistance**”); and (C) the lease (with an obligation to purchase) or sale of the Equipment to the Company or such other person as may be designated by the Company and agreed upon by the Agency and sublease by the Agency to the Company; and

WHEREAS, the Project includes the following, as they relate to the construction, installation, furnishing, equipping of such Project, whether or not any materials or supplies described below are incorporated into or become an integral part of such Project: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the construction of the Project; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the construction of the Project and installation of the equipment for the Project; and

WHEREAS, the Company is a tenant of EFG/Saber Heritage SC, LLC (the “**Landlord**”) and the Project is part of the Hudson Heritage 2019 Project previously approved by the Agency and subject to a straight-lease transaction between the Landlord and the Agency

whereby the Agency certain financial assistance to the Landlord;

WHEREAS, the Project will include facilities or property that are primarily used in making “retail sales,” as defined within Section 862(2)(a) of the Act, and the Agency’s final approval of the provision of Financial Assistance for the Project is contingent upon the Agency’s finding that the Project complies with Section 862(2)(a) of the Act.

WHEREAS, the Agency has determined that the financing of the Project will promote and further the purposes of the Act; and

WHEREAS, on October 9, 2019, the Agency adopted a Preliminary Resolution (the “**Preliminary Resolution**”) authorizing the Project and the execution of this Preliminary Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency and the Company agree as follows:

1. Undertakings of the Agency. Based upon the statements, representations, and undertakings of the Company and subject to the conditions set forth herein and in the Preliminary Resolution, the Agency agrees as follows:

(a) The Agency shall adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) construction, installation, furnishing and equipping of the Project and the financing of such costs; and (ii) the subleasing of the Equipment to the Company, all as shall be authorized by law and be mutually satisfactory to the Agency and the Company.

(b) The Agency shall enter into an agreement to sublease the Equipment to the Company (the “**Lease Agreement**”). The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Company.

(c) [Reserved].

(d) The Agency shall take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

2. Representations of the Company. The Company hereby represents to the Agency that:

(a) The Project is located in the Dutchess County, New York;

(b) The proposed financing of the Project will contribute to increased employment opportunities in Dutchess County, New York; and

(c) The Company intends that the Project will comply with all applicable federal, state, and local laws, ordinance, rules, and regulations and the Company shall have obtained all necessary approvals and permits required thereunder.

3. Undertakings of the Company. Based upon the statements, representations, and undertakings of the Agency and subject to the conditions set forth herein and in the Preliminary Resolution, the Company agrees as follows:

(a) The Company shall use all reasonable efforts necessary or desirable to enter into a contract or contracts for the acquisition of the Equipment (to the extent not heretofore acquired) and on the terms and conditions set forth in the Lease Agreement, transfer to the Agency, or cause to be transferred to the Agency, title to or a leasehold interest in, the Equipment, in connection with the Project.

(b) (i) To the extent the Agency is not defended and indemnified under a policy of insurance maintained by the Company, and subject to any subrogation waivers contained in the Lease Agreement, the Company shall defend and indemnify the Agency and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on: (1) labor, services, materials and supplies, including equipment, ordered or used in connection with the Project and installation of Equipment in the Project (including any expense incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing) except that the Company shall not be required to indemnify the Agency for the willful or grossly negligent conduct of the Agency, its employees, agents, or representatives; or (2) any untrue statement or alleged untrue statement of a material fact necessary in order to make the statements herein, in the light of the circumstances under which they were made, not misleading.

(ii) The Company shall not permit to stand, and shall at its own expense take all steps reasonably necessary to remove, any mechanic's or other liens against the Project for labor for the renovation, installation, furnishing and equipping of the Project.

(iii) To the extent the Agency is not defended and indemnified under a policy of insurance maintained by the Company, and subject to any subrogation waivers contained in the Lease Agreement, the Company shall indemnify and hold the Agency harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Project, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing, except that the Company shall not be required to indemnify the Agency for the willful or grossly negligent conduct of the Agency, its employees, agents, or representatives.

(c) [Reserved].

(d) The Company shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until the Lease Agreement becomes effective. It is the intent of the Agency and the Company that this Preliminary Agreement be superseded in its entirety by the Lease Agreement.

(b) It is understood and agreed by the Agency and the Company that the execution of the Lease Agreement and related documents are subject to: (i) obtaining all necessary governmental approvals; (ii) approval of the members of the Agency; and (iii) a finding by the Agency, after review of all relevant information, that the Project complies with Section 862(2)(a) of the Act.

(c) The Company agrees that they will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses which the Agency may incur as a consequence of executing this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Project to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Transaction Counsel and Agency's Counsel in connection with their representation of Agency in this matter and their preparation of any documents pertaining to the provisions of Financial Assistance.

(d) All commitments of the Agency under ¶1 hereof and of the Company under ¶¶2 and 3 hereof (excepting the obligations of the Company set forth in subparagraphs 3(b) and 4(c) hereof, which shall survive the termination of this Preliminary Agreement) are subject to the condition that the Lease Agreement shall have been executed no later than fifteen (15) months from the date hereof (or such other date as shall be mutually satisfactory to the Agency and the Company).

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