

FINAL AUTHORIZING RESOLUTION
(Shop-Rite Supermarkets, Inc. 2019 Project)

At a regular 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 8th day of January, 2020, the following members of the Agency were:

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

ABSENT: Alfred D. Torreggiani

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 Chairman 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 (Shop-Rite Supermarkets, Inc. 2019 Project) and the leasing of the facility to Shop-Rite Supermarkets, Inc. 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 SHOP-RITE SUPERMARKETS, INC. 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, 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 requested the Agency’s assistance in the acquisition of the Company’s interest in the Land (hereinafter defined), construction of an approximately 65,000

square foot building to be located upon the Land (the “**Improvements**”), and the acquisition, equipping, and installing of certain equipment and personal property (the “**Equipment**”; and together with the Improvements and the Land, the “**Facility**”), which Facility is to be used by the Company as a supermarket (the “**Project**”); and

WHEREAS, the Agency previously provided financial assistance to EFG/Saber Heritage SC, LLC (the “**Developer**”), for a project consisting the acquisition of an approximately 156.19 acre parcel of land located at 3532 North Road (Route 9), Town of Poughkeepsie, County of Dutchess, State of New York (the “**Phase I Land**”); the construction, improvement, reconstruction, repair, renovation, installation, furnishing and installation of approximately 108,500 square feet of mixed-use commercial space which will include an approximately 65,000 square foot space to be used as a grocery store or other similar use, an approximately 10,000 square foot space to be used as a day care center or other similar use, an approximately 17,000 square foot space to be used as a gym or fitness center or other similar use and approximately 16,500 square feet of commercial space to be used for food service or other general retail uses, all to be located on a portion of the Phase I Land located on the east side of Winslow Gate Road, as well as infrastructure construction and improvement, including water, sewer and environmental remediation on the Phase I Land; and the acquisition and installation of certain equipment and personal property (collectively, the “**Master Facility**”), which Master Facility is leased by the Agency to the Developer and is Phase I of a multi-phased mixed-use commercial facility known as “Hudson Heritage” to provide services to the people of Dutchess County, which financial assistance was approved by resolution dated April 10, 2019 (the “**Master Authorizing Resolution**”); and

WHEREAS, the Agency acquired a leasehold interest in the Phase I Land from the Developer, pursuant to a certain Company Lease Agreement, dated as of June 1, 2019 (the “**Master Company Lease**”), by and between the Developer and the Agency; and

WHEREAS, the Agency is leasing and subleasing the Master Facility to the Developer pursuant to a certain Lease and Project Agreement, dated as of June 1, 2019 (the “**Master Lease Agreement**”); by and between the Agency and the Developer; and

WHEREAS, the Developer has agreed to sub-sublease an approximately 1.5-acre portion of the Phase I Land (the “**Land**”), to the Wakefern Food Corp. (the “**Landlord**”) pursuant to a certain Ground Lease, dated July 17, 2018 (the “**Ground Lease**”), by and between the Developer and the Landlord; and

WHEREAS, the Landlord has agreed to sub-sub-sublease the Land to the Company pursuant to a certain Ground Sublease dated July 17, 2018 (the “**Ground Sublease**”), by and between the Landlord and the Company; and

WHEREAS, the Master Facility may not be subleased, in whole or in part, without the prior written consent of the Agency; and

WHEREAS, such consent may be manifested by the execution and delivery of a Tenant Agency Compliance Agreement, dated the Closing Date (the “**Tenant Agency Compliance Agreement**”) between the Agency and the Company; 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 certain Company Lease Agreement dated as of January 1, 2020 (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 January 1, 2020 (the “**Lease Agreement**”) by and between the Agency and the Company; 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 (the “**Financial Assistance**”) to the Company consistent with the policies of the Agency, in the form of exemptions from sales and use taxes in an amount not to exceed \$1,035,937.00 in connection with the purchase or lease of equipment, building materials, services or other personal property with the respect to the Facility; and

WHEREAS, the Agency previously determined in its Master Authorizing Resolution that although the Master Facility is used in making retail sales to customers who visit the Master Facility and would be considered a “retail facility”, based upon the representations and warranties of the Developer and Developer Counsel, the Master Facility is located in a “highly distressed area” as described in §862(2)(b) of the Act and therefore the Facility, as part of the Master Facility, is not subject to the prohibitions on providing financial assistance to retail facilities; and

WHEREAS, the Agency previously determined in its Master Authorizing Resolution that the Master Facility will not have a significant adverse impact or significant adverse effect on the environment as defined under SEQRA and therefore the Facility, as part of the Master Facility, will not have a significant adverse impact or significant adverse effect on the environment as defined under SEQRA; and

WHEREAS, in compliance with §859-a of the Act, the Agency on January 6, 2020 held a public hearing on the grant of the Financial Assistance as set forth herein following publication in the *Poughkeepsie Journal* on December 20, 2019 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 reaffirms and readopts the findings and determinations in its Master Authorizing Resolution with regard to the Master Facility.

Section 2. The Agency 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 January 6, 2020, concerning the grant of the 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) The Project will serve the Agency’s public purposes as set forth in the Act by preserving or increasing the number of permanent, private sector jobs in Dutchess County and the State of New York.

(g) 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

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

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

(j) The Lease Agreement will be an effective instrument whereby: (1) the Agency leases and subleases the Facility to the Company; (2) 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 (3) 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; and

(k) The execution of the Tenant Agency Compliance Agreement will satisfy the requirement of Section 9.3 of the Master Lease Agreement that any subleasing of the Master Facility be consented to in writing by the Agency.

Section 3. Subject to (i) the Company executing the Company Lease, the Lease Agreement, the Tenant Agency Compliance 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 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, the Lease Agreement, and the Tenant Agency Compliance 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. The Agency hereby authorizes and approves the Financial Assistance to be granted to the Company in connection with the Project.

Section 8. Recapture Provisions. The Agency has retained 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 A, upon the occurrence of a Recapture Event as defined therein.

Section 9. 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 \$12,750,000.00, which result in New York State and local sales and use tax exemption benefits (“**sales and use tax exemption benefits**”) not to exceed \$1,035,937.00. 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 10.

(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, the Lease Agreement, and the Tenant Agency Compliance 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 11. 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 12. This resolution shall take effect immediately.

The following resolution was duly moved by Mark Doyle seconded by Donald R. Sagliano, discussed and adopted with the following members voting:

Timothy Dean, Chairman	VOTING	“Aye”
Mark Doyle, Vice Chairman	VOTING	“Aye”
Kathleen M. Bauer, Secretary/Treasurer	VOTING	“Aye”
Alfred D. Torreggiani	being	ABSENT
Stacey M. Langenthal	VOTING	“Aye”

Donald R. Sagliano

VOTING

“Aye”

Ronald J. Piccone, II

VOTING

“Aye”

Adopted: January 8, 2020

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EXHIBIT A

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 that if there shall occur a Recapture Event during the Lease Term, 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).

(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 the 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**”);

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:

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

- (iv) 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 this 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
- (v) 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
- (vi) 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) 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.

(e) 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.

(f) 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).

(g) 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.

(h) Notwithstanding the foregoing, the Board of Directors of the Agency may waive the provisions of this Section in its sole discretion based upon its review of the circumstances of the Company.