

RESOLUTION AUTHORIZING AMENDMENT
(Hudson Heritage 2019 Project – Phase I Amendment)

A regular meeting of the Dutchess County Industrial Development Agency, having offices at Three Neptune Road, Poughkeepsie, New York, was convened in public session on September 9, 2020 at 8:00 a.m., local time. Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo’s Executive Order 202.1, as extended, suspending certain requirements of the Open Meetings Law, the meeting was held electronically via webinar with teleconference access made available to the public, instead of a public meeting open for the public to attend in person.

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

ABSENT:

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 a certain industrial development facility (Hudson Heritage 2019 Facility – Phase I) and the leasing of the facility to EFG/Saber Heritage SC, LLC, as more particularly described below:

**RESOLUTION OF THE DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY APPROVING THE AMENDMENT OF, THE
HUDSON HERITAGE 2019 FACILITY 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, EFG/SABER HERITAGE SC, LLC, a New York limited liability company having offices c/o Saber Real Estate North, LLC at 80 Business Park Drive, Suite 306, Armonk, New York 10504 (the “Company”), previously submitted an application to the Agency requesting the Agency provide certain “financial assistance” (within the meaning of the Act) to

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finance the a Master Project (the “**Master Project**”) in connection with the construction, improvement, reconstruction, repair, renovation, installation, furnishing and equipping of a certain mixed use commercial facility (the “**Master Facility**”) in approximately eight (8) phases. The Company previously requested that the Agency take official action toward the final issuance or granting of financial assistance (the “**Phase I Financial Assistance**”) to the Company with regard to the first phase of the Master Project (“**Phase I**”) consisting of (a) 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, bearing Tax Map Grid No. 134689-6163-03-011149-0000, as described in Exhibit A attached hereto (the “**Land**”), (b) 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 (the “**Grocery Store**”), 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 Land located on the east side of Winslow Gate Road, as well as a portion of Master Facility-wide infrastructure construction and improvement, including water, sewer and environmental remediation on the Land (the “**Improvements**”) and (c) the acquisition and installation of certain equipment and personal property, as described in Exhibit B attached to the hereinafter defined Lease Agreement (the “**Phase I Equipment**”; and together with the Land and the Improvements, the “**Phase I Facility**”). A prior public hearing was held for the Phase I Facility on April 9, 2019, after which the Agency’s Board members approved the Phase I Project by resolution dated April 10, 2019 (the “**Phase I Authorizing Resolution**”). The Grocery Store was subsequently severed from the Phase I Project and made a separate project of the Agency known as the Shop-Rite Supermarkets, Inc. 2019 Project; and

WHEREAS, the Company submitted a letter amendment to its application dated June 26, 2020 requesting a change in scope for the Phase I Facility (the “**Phase I Amendment**”). The Agency intends to effectuate the Phase I Amendment through amendments to the existing documents between the Company and the Agency with respect to the Phase I Facility. The Phase I Amendment will amend the Phase I Facility to include:

- (A) the construction, improvement, reconstruction, repair, renovation, furnishing and installation of approximately 28,650 square feet of mixed-use commercial space currently anticipated to include food service and other general retail uses, to be located on the Land on the west side of Winslow Gate Road (the “**West of Winslow Facility**”); and
- (B) the construction, improvement, reconstruction, and installation of exterior stabilization and preservation measures for the approximately 80,000 square foot existing main Administration Building, including exterior repointing, new windows, and new roofs, located on the Land; (together with the Phase I Facility and the West of Winslow Facility, the “**Amended Phase I Facility**”); and
- (C) the acquisition and installation of new equipment, machinery and other personal property for use in the premises described above (collectively the “**Amended Phase I Equipment**”) to be owned by the Agency and leased to the Company to be used as part of the Amended Phase I Facility.

WHEREAS, the Company and the Agency previously entered into a Company Lease Agreement, dated as of June 1, 2019 (the “**Company Lease**”), whereby the Company leased the Phase I Facility to the Agency; and

WHEREAS, the Agency and the Company previously entered into a Lease and Project Agreement, dated as of June 1, 2019 (the “**Lease Agreement**”), whereby the Agency leased the Phase I Facility to the Company; and

WHEREAS, the Agency and the Company will now enter into a First Amendment of Company Lease Agreement, dated as of September 1, 2020 or such other date as may be determined (the “**First Amendment to Company Lease**”), whereby the Agency and the Company will agree to amend definition of the Phase I Facility in the Company Lease to include the Amended Phase I Facility;

WHEREAS, the Agency and the Company will now enter into a First Amendment of Lease and Project Agreement, dated as of September 1, 2020 or such other date as may be determined (the “**First Amendment to Company Lease**”), whereby the Agency and the Company will agree to amend the definition of the Phase I Facility in the Lease Agreement to include the Amended Phase I Facility;

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

WHEREAS, the Agency previously determined in its Phase I Authorizing Resolution that although the Phase I Facility is used in making retail sales to customers who visit the Phase I Facility and would be considered a “retail facility”, based upon the representations and warranties of the Master Company and Master Company Counsel, the Master Facility is located in a “highly distressed area” as described in §862(2)(b) of the Act and therefore the Phase I 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 Phase I Authorizing Resolution that Project 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 June 25, 2018 held a public hearing on the grant of financial assistance with regard to the Phase I Facility following publication in the *Poughkeepsie Journal* on June 10, 2018 of a notice of the public hearing; and

WHEREAS, on September 3, 2020 the Agency held a public hearing on the Phase I Amendment as set forth herein following publication in the *Poughkeepsie Journal* on August 19, 2020 of a notice of the public hearing; and

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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 Amended Phase I 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 Authorizing Resolution with regard to the Phase I 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 Amended Phase I Facility constitutes a “project”, as such term is defined in the Act; and

(c) The public hearing held by the Agency on September 3, 2020, concerning the Phase I Amendment as set forth herein 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 the Phase I Amendment; and

(d) The Phase I Amendment 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 Phase I Amendment is reasonably necessary to induce the Company to preserve the competitive position of the Company in its industry; and

(f) The Phase I Amendment 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 Amended Phase I 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 Amended Phase I Facility is located; and

(h) It is desirable and in the public interest for the Agency to approve the requested Phase I Amendment; and

(i) The First Amendment to Lease Agreement and First Amendment to Company Lease will be an effective instrument whereby the Agency and the Company agree to amend the Lease Agreement and Company Lease; and

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Section 3. In consequence of the foregoing, the Agency hereby determines to: (i) execute and deliver the First Amendment to Lease Agreement and First Amendment to Company Lease, in such forms and containing such terms, conditions and provisions as the person executing the same on behalf of the Agency shall approve, such approval to be conclusively evidenced by his or her execution and delivery thereof, and (ii) execute, deliver and perform such other related documents to which the Agency is a party, as may be necessary or appropriate.

Section 4. 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, as amended by the First Amendment to 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 5. Subject to the provisions of this resolution and the Lease Agreement, the Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the First Amendment to Lease Agreement and First Amendment to Company Lease and such other related documents as may be necessary or appropriate in furtherance thereof, and all acts heretofore taken by the Agency with respect to such amendment are hereby approved, ratified and confirmed

Section 6.

(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 First Amendment to Lease Agreement and First Amendment to Company Lease, together with such other related documents as may be, in the judgment of the Chairman, the Executive Director, or any of the other members of the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the "**Agency Documents**"). The execution thereof by the Chairman, Chief Executive Officer, or any member 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 7. 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 8. 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	VOTING	“Aye”
Donald R. Sagliano	VOTING	“Aye”
Ronald J. Piccone, II	VOTING	“Aye”

Adopted: September 9, 2020

