

PROJECT AUTHORIZING RESOLUTION

(Diamond Properties LLC Project – Marina Lease and PILOT Approvals)

A regular meeting of City of Peekskill Industrial Development Agency was convened on Tuesday August 26, 2014 at 7:00 p.m.

The following resolution was duly offered and seconded, to wit:

On motion duly made and seconded, the following resolution was placed before the members of the City of Peekskill Industrial Development Agency:

Resolution No. 2014 - 05

RESOLUTION OF THE CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY (i) APPOINTING DIAMOND PROPERTIES, LLC OR AN ENTITY TO BE FORMED (COLLECTIVELY, THE "COMPANY") AS ITS AGENT TO UNDERTAKE THE PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGENT AND FINANCIAL ASSISTANCE AGREEMENT WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE PROVISION OF FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (i) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE PROJECT, AND (ii) MORTGAGE RECORDING TAX EXEMPTIONS RELATING TO THE PROJECT, (iv) AUTHORIZING AND RATIFYING THE EXECUTION OF RELATED DOCUMENTS; AND (v) ADOPTING SEQRA FINDINGS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 671 of the Laws of 1974 of the State of New York, as amended (hereinafter collectively called the "Act"), the **CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, the Agency is the fee owner of that certain parcel of realty (the "Premises") located within the City of Peekskill (the "City") and more particularly described as (i) that certain approximately 6.41 acre waterfront parcel of real estate identified as TMID No. 32.19-1-2, including all upland realty (the "Upland Parcel"), including buildings and improvements located thereon including a certain 20,000 sf restaurant building commonly referred to as the "Gin Building", a certain multipurpose warehouse and commercial building, along with certain boat and vehicle storage and maintenance buildings and improvements, parking, curbage and other improvements (collectively, the "Upland Improvements"), and (ii) those portions of such Premises including that certain underwater realty (the "Water Parcel"), including all marina and

waterfront docking and cribbage improvements located thereon (the "Marina Improvements", and collectively herein with the Upland Improvements, the "Existing Improvements"); and

WHEREAS, the Agency has leased the Premises over time to certain tenants pursuant to (i) that certain Lease Agreement, dated as of February 13, 1987, as amended by that certain Lease Modification Agreement, dated as of December 27, 2000 (and collectively herein, the "Upland Lease"), such Upland Lease relating to the Upland Parcel and Upland Improvements, and (ii) that certain Lease Agreement, originally dated as of December 7, 1988, as modified by Lease Modification Agreement dated as of December 22, 1989, as further modified by that certain letter agreement, dated as of October 20, 1994, and as modified by that certain Lease Modification Agreement dated as of December 27, 2000 (herein, the "Water Lease"), such Water Lease relating to the Water Parcel and Marina Improvements; and

WHEREAS, at the request of the existing tenant Excel Service and Maintenance Corp. ("Excel"), the Agency, by resolution adopted September 10, 2013 (the "Agency Lease Resolution") previously authorized the assumption of a leasehold interest in the Premises by **DIAMOND PROPERTIES, LLC**, by and through one or more entities to be formed (collectively herein, the "Company") through the amendment and restatement of the Upland Lease and Water Lease whereby the leasehold interests thereof are merged into a single instrument to effectuate the lease of the Premises and Existing Improvements by the Agency to the Company pursuant to and in accordance with the terms and conditions therein (collectively, the "Amended Lease"); and

WHEREAS, pursuant to the Agency Lease Resolution, and following the scheduling and conduct of a public hearing held on September 10, 2013 (the "Public Hearing") and approval by the Common Council of the City on September 9, 2013, the Agency also authorized the delivery of certain financial assistance to the Company in the form of a PILOT Agreement (the "PILOT Agreement"); and

WHEREAS, the Company and Excel desire to undertake the contemplated assignment of leasehold interests pursuant to and in accordance with the Amended Lease and PILOT Agreement; and

WHEREAS, in furtherance of the foregoing, the Company has submitted an application (the "Application") to the Agency wherein it has requested the Agency's assistance with a certain project (the "Project") that will include (i) the execution and delivery of the Amended Lease and PILOT Agreement whereby the Company will be granted a leasehold interest in the Facility; (ii) the planning, design, construction, operation and maintenance of (a) certain improvements to the Existing Improvements to provide for a multi-tenanted commercial and retail facility and marina complex (the "Improvements"), including, but not limited to (A) internal building improvements and site improvements associated with the Upland Improvements for purposes of the Company's leasing of same to multiple subtenants pursuant to the Amended Lease, and (A) certain improvements to the Marina Improvements, including subsurface piling, expanded docking improvements, and general improvements and repairs to existing docks for operation and maintenance by the Company as a marina facility open to the general public; and (iii) the acquisition and installation in and around the Existing Improvements and the

Improvements of certain machinery, equipment and other items of tangible personal property (the "Equipment", and collectively with the Existing Improvements and Improvements, the "2014 Facility"); and

WHEREAS, in furtherance of the Project, and in response to the Application, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of undertaking the Project, (ii) negotiate and enter into an Agent and Financial Assistance Agreement (the "Agent Agreement"), and (ii) provide financial assistance (the "Financial Assistance") to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project and (b) a mortgage recording tax exemption for financings related to the Project; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the Project and the Financial Assistance, with such Financial Assistance to not exceed \$100,000; and

WHEREAS, the Agency has identified the Project as an "Unlisted Action" pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations at 6 NYCRR Part 617 (collectively referred to as "SEQRA"), for which the Agency will conduct an uncoordinated review based upon the Company's application and a Short Environmental Assessment Form ("EAF"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution authorizing (i) the acceptance of the Application; (ii) the undertaking of the Project and appointing the Company to undertake same as agent of the Agency; (iii) the provision of the Financial Assistance to the Company; (iv) adoption of findings pursuant to SEQRA, (v) the execution and delivery of the Agent Agreement, along with related documents, (vi) the ratification of the Amended Lease and PILOT Agreement, along with the execution and delivery of certain title instruments relating to the Premises.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF PEEKSKILL INDUSTRIAL AGENCY AS FOLLOWS:

Section 1. Based upon the representations made by the Company to the Agency in the Company's Application, the Agency hereby finds and determines that:

(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 Agency has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in the City of Peekskill, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(E) Based upon the Agency's review of the Project, the Project may include facilities or property that are primarily used in making retail sales, as defined within Section 862(2) of the Act, to customers who personally visit the Facility. Notwithstanding the foregoing, the Project is located in a "highly distressed area" as defined pursuant to the Act. The Agency hereby finds that the Company and Project will play a role in restoring critical buildings and waterfront infrastructure within the City, along with retaining and creating jobs within the Facility. In accordance with the foregoing, and pursuant to Section 862(2)(c) of the Act, the Agency hereby finds that the undertaking of the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in the State.

Section 2. The proposed Financial Assistance being contemplated by the Agency includes (i) an exemption from all New York State and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, reconstruction, renovation, rehabilitation or equipping of the Facility, and (ii) an exemption from mortgage recording taxes in connection with leasehold mortgages secured in furtherance of the Project. The Financial Assistance shall not exceed \$100,000 unless (i) the Agency schedules and conducts a public hearing in accordance with the Act, and (ii) thereafter, the Agency authorizes Financial Assistance in excess of \$100,000. The foregoing limitation shall not relate to the PILOT Agreement, which was previously authorized and approved by the Agency. The provision of the Financial Assistance (including the PILOT Agreement) shall be contingent upon the receipt by the Agency of a Confirming Certificate from the City Manager of the City pursuant to Section 862(2)(c) of the Act.

Section 3. Based upon a review of the Application submitted to the Agency by the Company, along with the EAF and related materials, the Agency hereby designates itself as "Lead Agency," within the meaning of and for all purposes of complying with SEQRA; (ii) finds that the Project involves an "Unlisted Action" as that term is defined under SEQRA; (iii) determines that (A) the Project will result in no major impacts and, therefore, is one which will not cause significant damage to the environment; (B) the Project will not have a "significant effect on the environment" as such quoted terms are defined in SEQRA; and (C) no "environmental impact statement" as such quoted term is defined in SEQRA, need be prepared

for this action; and (iv) determines that all of the provisions of SEQRA that are required to be complied with as a condition precedent to the approval of the Financial Assistance contemplated by the Agency with respect to the Project, and the participation by the Agency in undertaking the Project, have been satisfied. This determination constitutes a Negative Declaration for purposes of SEQRA. No further SEQRA review is necessary.

Section 4. Subject to (i) the Company executing the Amended Lease, PILOT Agreement, Agent Agreement, Assignment and Title Documents; and (ii) and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, renovation, construction, reconstruction, rehabilitation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however, the Agent Agreement shall expire on March 1, 2016 (unless extended for good cause by the Executive Director of the Agency).*

Section 5. Based upon the representation and warranties made by the Company the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately **\$1,180,461.30**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$87,000.00**. The Agency agrees to consider any requests by the Company for increase 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 6. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture 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; (iv) the Company has made a material false statement on its application for financial assistance; (v) 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; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and 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 (collectively, items (i) through (vi) hereby defined as a “Recapture Event”).

As a condition precedent of receiving sales and use tax exemption benefits and real property tax abatement 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, mortgage recording tax benefits and/or real property tax abatements abatement 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.

Section 7. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by a lender to be identified by the Company (the “Lender”) up to a maximum principal amount required to undertake the Project and/or finance equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Amended Lease, PILOT Agreement, Assignment and Title Documents, collectively called the “Agency Documents”); and, where appropriate, the Secretary or Acting Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman and/or Executive Director of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman and/or Executive Director of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency’s interest in the Project.

Section 8. The Chairman, Vice Chairman and/or Administrative Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement and related documents with such changes as shall be approved by the Chairman, Vice Chairman, the Executive Director and counsel to the Agency upon execution; provided the Agent Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

Section 9. The Agency hereby ratifies the prior approval of the execution and delivery of the Amended Lease and PILOT Agreement, along with related documents (including one or more memoranda of leases, Form RP-412-a and related certificates and documents). The Agency hereby further authorizes the execution and delivery of an Assignment, Assumption and Release Agreement (the “Assignment”) to be entered into by the Agency, Excel and the Company in such form as shall be approved by the Chairman, Vice Chairman, the Executive Director and counsel to the Agency upon execution. In addition, the Agency further authorizes the execution and

delivery of certain title curative instruments relating to the Premises to conform the intent and provisions of the Amended Lease, including termination of certain easements and other interests in the Premises (collectively, the "Title Documents"), in such forms and with changes as shall be approved by the Chairman, Vice Chairman, the Executive Director and counsel to the Agency upon execution. Due to the complex nature of this transaction, the Agency hereby authorizes its Chairman (or Vice Chairman) or Executive Director to approve, execute and deliver such further agreements, documents and certificates as the Agency may be advised by counsel to the Agency or Transaction Counsel to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by the Chairman (or Vice Chairman) or Executive Director of the Agency.

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 and to execute and deliver all such 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 resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 11. These Resolutions shall take effect immediately upon adoption.

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

	<u><i>Yea</i></u>	<u><i>Nea</i></u>	<u><i>Absent</i></u>	<u><i>Abstain</i></u>
Alan Kravitz	[X]	[]	[]	[]
Arun Manansingh	[X]	[]	[]	[]
Deborah Post	[X]	[]	[]	[]
Michael Morey	[X]	[]	[]	[]
Frances Gibbs	[X]	[]	[]	[]
Nicholas Misch	[]	[]	[X]	[]
Charles Jennings	[X]	[]	[]	[]

The Resolutions were thereupon duly adopted.

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) SS:

I, the undersigned Secretary of the City of Peekskill Industrial Development Agency, DO
HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the City of
Peekskill Industrial Development Agency (the "Agency"), including the resolution contained
therein, held on August 26, 2014, with the original thereof on file in my office, and that the same
is a true and correct copy of the proceedings of the Agency and of such resolution set forth
therein and of the whole of said original insofar as the same related to the subject matters therein
referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting,
that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public
Officers Law (Open Meetings Law), said meeting was open to the general public, and that public
notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present
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 modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said
Agency this 30th day of October, 2014.



Gloria A. Zonghetti