

PROJECT AUTHORIZING RESOLUTION
(216 South Division LLC Project)

A meeting of the City of Peekskill Industrial Development Agency was convened on Tuesday August 25, 2020 at 7:00 p.m.

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

Resolution No. 08/2020 -

RESOLUTION OF THE CITY OF PEEKSKILL INDUSTRIAL DEVELOPMENT AGENCY (i) APPOINTING 216 SOUTH DIVISION LLC (THE “COMPANY”, FOR ITSELF AND/OR ENTITIES TO BE FORMED) AS ITS AGENT TO UNDERTAKE THE PROJECT (AS MORE FULLY DESCRIBED BELOW); (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE OF AN AGENT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT; (iii) AUTHORIZING THE PROVISION OF CERTAIN FINANCIAL ASSISTANCE TO THE COMPANY (AS FURTHER DEFINED HEREIN); (iv) ADOPTING FINDINGS WITH RESPECT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (“SEQRA”); AND (v) AUTHORIZING THE EXECUTION OF RELATED DOCUMENTS 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 industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **216 SOUTH DIVISION LLC**, for itself and/or a related entity or entity to be formed (collectively, the “Company”), has submitted an application to the Agency requesting the Agency’s assistance with a certain project (the “Project”) consisting of (i) the acquisition by the Agency of a leasehold interest in a parcel of real property located at 216 South Division Street, Peekskill, New York (the “Land”, being more particularly described tax parcels 33.37-4-6) along with the existing improvements thereon consisting principally of a vacant residential structure (the “Existing Improvements”); (ii) the demolition of the Existing Improvements and the planning, design, construction, and operation of an approximately 27,000 sf 3-story mixed use facility comprised of 21 market rate apartment units and approximately 2,300 sf of commercial space along with related site improvements, access and egress improvements, utility improvements, signage, curbage, sidewalks, and landscaping improvements (collectively, the “Improvements”); (iii) the acquisition of and installation in and around the Existing Improvements and Improvements by the Company of machinery, equipment, fixtures and other

items of tangible personal property (the “Equipment” and, collectively with, the Land, the Existing Improvements and the Improvements, the “Facility”); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”); and

WHEREAS, on July 28, 2020, the Agency adopted an initial resolution (the “Initial Project Resolution”) which (i) accepted the Company’s application, (ii) authorized the scheduling and conduct of a public hearing in compliance with the Act, (iii) described the contemplated forms of financial assistance to be provided by the Agency (the “Financial Assistance”, as described herein); and

WHEREAS, the Planning Commission of the City of Peekskill (the “Planning Commission”) reviewed the proposed Project pursuant to the State Environmental Quality Review Act, as codified under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, “SEQRA”) and related Environmental Assessment Form (“EAF”) and issued a Negative Declaration (the “Negative Declaration”), a copy of which, along with the EAF, are attached hereto as Exhibit A; and

WHEREAS, in accordance with the Initial Project Resolution, the Agency published and forwarded a Notice of Public Hearing to the Affected Tax Jurisdictions at least ten (10) days prior to said Public Hearing, copies of such notices and proof of publication and a copy of the minutes of the Public Hearing are attached hereto as Exhibit B; and

WHEREAS, pursuant to Section 859-a of the Act, the Agency held a public hearing on August 25, 2020 with respect to the Project (the “Public Hearing”) and the proposed Financial Assistance (as further defined herein) being contemplated by the Agency whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, the Agency is contemplating providing financial assistance to the Company with respect to the Project (collectively, the “Financial Assistance”) in the form of: (A) an exemption from all State and local sales and use taxes with respect to qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility; and (B) mortgage recording tax exemption(s) relating to financings undertaken by the Company in furtherance of the Project; and

WHEREAS, in furtherance of the foregoing, the Agency desires to authorize (i) the undertaking of the Project and the appointment of the Company as agent of the Agency to undertake same; (ii) the execution and delivery of an Agent and Financial Assistance and Project Agreements (“Agent Agreement”), Lease Agreement, Leaseback Agreement, and related documents; and (iii) the provision of the Financial Assistance to the Company, which shall include (a) an exemption from all 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

construction and equipping of the Facility, and (b) mortgage recording tax exemptions in connection with financings undertaken by the Company for the Project.

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 a review of the Application, the EAF and the Negative Declaration issued by the Planning Commission and submitted to the Agency, the Agency hereby:

(i) consents to and affirms the status of the Planning Commission as Lead Agency for review of the Project and Facility, within the meaning of, and for all purposes of complying with SEQRA;

(ii) ratifies the proceedings undertaken by the Planning Commission as Lead Agency under SEQRA with respect to the construction and equipping of the Facility pursuant to SEQRA; and

(iii) finds that the Project as reviewed by the Planning Commission involves an "Unlisted" Action (as such quoted term is defined under SEQRA). The Agency's subsequent review herein as an interested and/or involved agency is "uncoordinated" (as such quoted term is defined under SEQRA). Based upon the review by the Agency of the EAF and related documents delivered by the Company to the Agency and other

representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a “significant effect on the environment” (as such quoted term is defined under SEQRA); and (iii) no “environmental impact statement” (as such quoted term is defined under SEQRA) need be prepared for this action. This determination constitutes a ratification of the Planning Commission’s “negative declaration” (as such quoted terms are defined under SEQRA) for purposes of SEQRA.

Section 2. Subject to (i) the Company executing the Agent Agreement, and (ii) 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 December 31, 2021 (unless extended for good cause by the Executive Director of the Agency).*

Section 3. 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 \$2,850,000.00, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed \$238,687.50. 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 4. 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 5. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any non-recourse leasehold 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, 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 and any such security instruments shall inure to the leasehold interest previously transferred by the Agency to the Company relating to the Facility.

Section 6. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement, Lease Agreement, Leaseback 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 and Leaseback 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 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 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 8. 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]	[]	[]	[]
Drew Claxton	[]	[]	[X]	[]
Deborah Post	[X]	[]	[]	[]
Janice Thompson	[X]	[]	[]	[]
Nicholas Misch	[X]	[]	[]	[]
Dr. David Mauricio	[]	[]	[]	[X]
	[]	[]	[]	[]

The Resolutions were thereupon duly adopted.

EXHIBIT A

SEQRA Materials

EXHIBIT B

[Public Hearing Notice and Minutes]

Attached Hereto

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 foregoing extract of the minutes of the meeting of the Wayne
County Industrial Development Agency (the "Agency") including the resolution contained
therein, held on August 25, 2020, 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 relates 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 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 seal of said Agency this 26th
day of August, 2020.



Gloria A. Zonghetti, Secretary

[SEAL]

