

**ECR Properties  
Amendment Resolution**

A regular meeting of the County of Chautauqua Industrial Development Agency (the “Agency”) was convened in public session on June 23, 2020, at 10:00 A.M. local time, and held remotely by conference call in compliance with Executive Order 202.1 issued by the Governor of the State of New York on March 12, 2020, as amended and supplemented.

The meeting was called to order by the Vice Chairman and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Dennis J. Rak	Vice Chairman
Hans Auer	Treasurer
Gary Henry	Secretary
Steven Thorpe	Member
Mark Odell	Member
Brad Walters	Member
Kelly Farrell-Dubois	Member

**NOT PRESENT:**

Michael Metzger	Chairman
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**THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:**

Mark Geise	Administrative Director/CEO
Richard E. Dixon	Chief Financial Officer
Paul Wendel	County Executive
Linda Burns	CCIDA Staff
Kristine Morabito	CCIDA Staff
Carol Rasmussen	CCIDA Staff
Kayla Strandburg	CCIDA Staff
Rosemarie Strandburg	CCIDA Staff
Mike Aceto	ECR Properties, Director of Administration
Gregory L. Peterson, Esq.	Counsel
Milan Tyler	Counsel
Michael Borrello	Counsel

The attached resolution no. 06-23-20-04 was offered by Brad Walters, seconded by Jay Churchill:

Resolution No. 06-23-20-04

RESOLUTION OF THE COUNTY OF CHAUTAUQUA  
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING  
CERTAIN MATTERS IN CONNECTION WITH ITS  
STRAIGHT-LEASE TRANSACTION WITH ECR  
PROPERTIES, INC.

WHEREAS, the County of Chautauqua Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-h of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, ECR Properties, Inc., a corporation duly organized and existing under the laws of the State of New York (together with its affiliates, collectively, the “Applicant”), previously presented an application for financial assistance (the “Original Application”), including a cost benefit analysis, to the Agency, requesting the Agency to consider undertaking a project (the “Existing Project”) consisting of the following: (A)(1) the acquisition of a leasehold interest in an approximately 10.6 acre parcel of land located at 85-87 Middle Road in the City of Dunkirk, Chautauqua County, New York (the “Land”), together with three (3) buildings containing in the aggregate approximately 177,681 square feet of space located thereon (collectively, the “Existing Facility”), (2) the renovation of a portion of the Existing Facility, (3) the construction to the Existing Facility of an approximately 21,800 square foot addition (the “Addition” and collectively with the Existing Facility, sometimes referred to as the “Facility”) and (4) the acquisition and installation of certain machinery and equipment (the “Equipment”) therein and thereon, all of the foregoing to constitute a manufacturing facility (the Land, the Existing Facility, the Addition and the Equipment being collectively referred to as the “Project Facility”); (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 sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Applicant; and

WHEREAS, the Applicant leased the Project Facility to the Agency pursuant to the terms and conditions set forth in that certain Lease to Agency dated as of December 1, 2009 between the Applicant and the Agency (as amended, the “Underlying Lease”); and

WHEREAS, the Agency appointed the Applicant as agent of the Agency to undertake the acquisition, construction, renovation, installation and equipping of the Project Facility and the Agency subleased the Project Facility to the Applicant, all pursuant to the terms and conditions set forth in that certain Lease Agreement dated as of December 1, 2009 between the Agency and the Applicant (as amended, the “Lease Agreement”), and the other Basic Documents (as defined in the Lease Agreement); and

WHEREAS, the Applicant agreed to make certain payments in lieu of real property taxes with respect to the Project Facility pursuant to that certain Payment in Lieu of Tax Agreement dated as of December 1, 2009 between the Applicant and the Agency (as amended, the “Existing PILOT Agreement”); and

WHEREAS, pursuant to an application for financial assistance submitted to the Agency by the Applicant on or about June 4, 2020 (the “Application”), the Applicant has requested that the Agency consider undertaking a new project with respect to the Project Facility (the “Proposed Project” and together with the Existing Project, collectively, the “Project”), consisting of the following: (A)(1) the repair and renovation of portions of the Facility, and (2) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof, all of the foregoing in connection with the Applicant’s manufacturing operations at the Project Facility; and (B) the granting of certain additional “financial assistance” (within the meaning of Section 854(14) of the Act) in the form of additional exemptions from sales and use taxes and an amended exemption from real property taxes consisting of an extension of the Existing PILOT Agreement for an additional ten (10) fiscal tax years (collectively, the “Additional Financial Assistance”); and

WHEREAS, the Additional Financial Assistance would represent a deviation from the Agency’s uniform tax exemption policy and guidelines (the “Tax Exemption Policy”) with respect to the making of payments in lieu of real property taxes; and

WHEREAS, any approval of the Proposed Project and the granting of the Additional Financial Assistance is contingent upon, *inter alia*, a determination by the members of the Agency to proceed with the Proposed Project following a determination by the Agency that (i) the applicable public hearing and notice requirements and other procedural requirements contained in the Act relating to the Proposed Project have been satisfied, and (ii) the undertaking of the Proposed Project by the Agency and the granting of the Additional Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Proposed Project (collectively, the “Applicable Laws”); and

WHEREAS, the Administrative Director/CEO of the Agency, (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Proposed Project and the Additional Financial Assistance contemplated by the Agency with respect to the Proposed Project, to be mailed on June 4, 2020 to the chief executive officer of the County of Chautauqua, New York (the “County”) and of each other affected tax jurisdiction within which the Project Facility is or is to be located, and posted a copy of the Application on the Agency’s website; (B) caused notice of the Public Hearing to be published on June 6, 2020 in *The Observer*, a newspaper of general circulation available to residents of the County; (C) caused the Public Hearing to be conducted on June 18, 2020 at 10:00 am, local time, via conference call rather than a public hearing open for the public to attend in person because of the restrictions on meetings and gatherings in effect pursuant to Executive Orders issued by the Governor of the State of New York; (D) to the extent practicable, caused the Public Hearing to be streamed on the Agency’s website in real-time in accordance with Section 857 of the Act, as amended; (E) caused a recording of the Public Hearing to be posted on the Agency’s website in accordance with Section 857 of the Act, as amended; and (F) caused a written report of the Public Hearing to be prepared which fairly summarizes the views presented at the Public Hearing and collected written correspondence from the public (collectively, the “Report”) and distributed the Report to the members of the Agency; and

WHEREAS, in accordance with Section 874(4) of the Act, (A) the Administrative Director/CEO of the Agency caused notice of a meeting of the Agency (the “IDA Meeting”) with respect to the proposed deviation from the Tax Exemption Policy to be mailed on June 4, 2020 to the chief executive officer of each affected tax jurisdiction, and (B) the members of the Agency conducted the IDA Meeting on the date hereof, reviewed any written comments or correspondence received regarding the proposed deviation from the Tax Exemption Policy, and approved the proposed deviation by resolution of the members of the Agency adopted on the date hereof; and

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, et. seq., as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), and by resolution of the members of the Agency adopted on the date hereof, the Agency has determined that the Project is a Type II action under SEQRA and, therefore, is not subject to further review under SEQRA; and

WHEREAS, the Agency now desires to make its determination to proceed with the Proposed Project and to grant the Additional Financial Assistance, subject to the terms hereof; and

WHEREAS, as preconditions to the granting of the Additional Financial Assistance, it is necessary to provide for reaffirmation and/or amendment of certain agreements executed in connection with the Existing Project and the certification of certain facts; and

WHEREAS, to accomplish the foregoing there has been prepared a form of Amendment No. 1 to Payment in Lieu of Tax Agreement, a Uniform Project Agreement, and certain other

agreements, reaffirmations, consents, certifications and amendments (collectively, the “Project Documents”) for authorization, approval and, where appropriate, execution and delivery to or by the Agency;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Lease Agreement.
2. In accordance with Section 859-a of the Act, the Agency has prepared a written cost-benefit analysis with respect to Proposed Project and the granting of the Additional Financial Assistance (the “Analysis”). The Agency has reviewed the Application, the Report and the Analysis and, based upon the representations made by the Applicant to the Agency and the facts and information obtained by the staff of the Agency and reported to and reviewed by the members of the Agency at this meeting, the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Proposed Project and the granting of the Additional Financial Assistance. In addition, the Agency hereby makes the following findings and determinations with respect to the Proposed Project:
  - (a) the granting by the Agency of the Additional Financial Assistance is reasonably necessary to cause the Applicant to undertake the Proposed Project;
  - (b) there is a likelihood that the Proposed Project would not be undertaken but for the granting of the Additional Financial Assistance by the Agency;
  - (c) the undertaking of the Proposed Project will not result in the removal of a facility or plant of the Applicant or any other occupant or user of the Project Facility from one area of the State of New York (the “State”) to another area of the State or in the abandonment of one or more plants or facilities of the Applicant or any other occupant or user of the Project Facility located within the State. Therefore the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Additional Financial Assistance by the Agency to the Applicant;
  - (d) the Proposed Project will serve the public purposes of the Act by preserving permanent, private sector jobs in the State;
  - (e) the granting of the Additional Financial Assistance by the Agency with respect to the Proposed Project will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Chautauqua County, New York and the State and improve their standard of living, and prevent unemployment and economic deterioration, and thereby serve the public purposes of the Act;
  - (f) based on the proposed use of the Project Facility, the economic effects of the Proposed Project on the area in which it is situated, and the employment reasonably

expected to be created and/or maintained by the Proposed Project, the Project Facility constitutes a commercial facility, and, therefore, the Proposed Project constitutes a “project” within the meaning of the Act;

(g) no funds of the Agency shall be used in connection with the Proposed Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Proposed Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media; and

(h) the Project Facility does not constitute and will constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Proposed Project. For purposes of this finding, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers.

3. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Administrative Director/CEO, the Chief Financial Officer and the staff of the Agency with respect to the matters contemplated by this Resolution, including, without limitation, those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Proposed Project.

4. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Proposed Project.

5. Having considered fully all comments received at or in connection with the Public Hearing, the Agency hereby approves the Proposed Project and the granting of the Additional Financial Assistance, subject to the terms hereof. The Agency hereby approves the granting of (a) an exemption from real property taxes having an estimated value of \$242,350, and (b) an exemption from sales and use taxes in the maximum amount of \$33,000.

6. The form and substance of the Project Documents, in the forms presented to the members of the Agency, together with such changes as the Chairman, the Vice Chairman, the Administrative Director/CEO or the Chief Financial Officer may hereafter deem necessary or appropriate, are hereby approved. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Project Documents to which the Agency is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution

and delivery of each such agreement, approval and consent by such person(s) shall be conclusive evidence of such approval.

7. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, 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 Project Documents, to execute and deliver all such additional certificates, instruments, agreements 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, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Project Documents to which the Agency is a party or which are binding on the Agency.

8. The authorizations set forth in this Resolution are subject to the condition that the Applicant shall reimburse the Agency for all costs and expenses incurred by the Agency in connection with the transactions contemplated herein, including, without limitation, all reasonable attorneys' fees and disbursements incurred by the Agency, including without limitation, the fees and expenses of Special Counsel, Phillips Lytle LLP.

9. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and the Project Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time; provided, however, that no covenants, stipulations, obligations or agreements of the Agency contained in this Resolution or any Project Document shall give rise to any pecuniary liability of the Agency or a charge against its general credit or shall obligate the Agency in any way except to the extent that the same can be paid or recovered from the Project Facility or the sale or liquidation of the Project Facility or revenues therefrom.

No covenant, stipulation, obligation or agreement herein contained or contained in any Project Document shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity and neither the members of the Agency nor any officer executing any Project Document shall be liable personally on the Project Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

10. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Administrative Director/CEO and Chief Financial Officer of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution, but may include adjustments to the Additional Financial Assistance granted hereunder. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and

delivery by some or all such Agency officers of relevant documents containing such modified terms

11. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Proposed Project, if applicable. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Proposed Project and hereby direct Special Counsel to the Agency to include such terms and conditions in all relevant Project Documents, if applicable.

12. The Chairman, the Vice Chairman, the Administrative Director/CEO and the Chief Financial Officer of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

13. This Resolution shall take effect immediately.

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

Michael Metzger	N/A
Dennis J. Rak	AYE
Hans Auer	AYE
Gary Henry	AYE
Steven Thorpe	AYE
Mark Odell	AYE
Brad Walters	AYE
Kelly Farrell-DuBois	AYE

The foregoing Resolution was thereupon declared duly adopted.



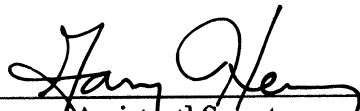
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF CHAUTAUQUA    )

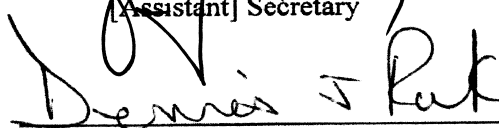
WE, the undersigned officers of the County of Chautauqua Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on June 23, 2020 with the original thereof on file in our offices, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held remotely by conference call in compliance with Executive Order 202.1 issued by the Governor of the State of New York on March 12, 2020 (as amended and supplemented, the "Executive Order"); (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; (D) the public had the ability to listen to the proceedings in accordance with the Executive Order; and (E) there was a quorum of the members of the Agency present throughout said meeting.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hand this 23<sup>rd</sup> day of June, 2020.

  
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[Assistant] Secretary

  
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[Vice] Chairman