

SUPPLEMENTAL PROJECT AUTHORIZING RESOLUTION
(701 River Street Associates, LLC Project)

A regular meeting of the Troy Industrial Development Authority (the “Authority”) was convened on July 17, 2020 at 10:00 a.m., local time, at 433 River Street, Troy, New York 12180.

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

<u>MEMBER</u>	<u>PRESENT</u>	<u>ABSENT</u>
Justin Nadeau	X	
Richard Nolan		X
Elbert Watson	X	
Susan Farrell	X	
Hon. Anasha Cummings	X	
Hon. Jim Gulli		X
Tina Urzan	X	
Stephanie Fitch	X	

The following persons were ALSO PRESENT: Justin Miller Esq., Mary Ellen Flores, Deanna Dal Pos, Tom Rossi, Donald LaRosa, Glen Lunde, Charlotte O’Connor, Jesse Batus, Dylan Turek, L Lewis, Bernie Doyle and Cheryl Kennedy.

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 a proposed project for the benefit of 701 River Street Associates, LLC, for itself or an entity to be formed.

On motion duly made by Tina Urzan and seconded by Susan Farrell, the following resolution was placed before the members of the Troy Industrial Development Authority:

Member	Aye	Nay	Abstain	Absent
Justin Nadeau			X	
Richard Nolan				X
Elbert Watson	X			
Susan Farrell	X			
Hon. Anasha Cummings	X			
Hon. Jim Gulli				X
Tina Urzan	X			
Stephanie Fitch	X			

Resolution No. 07/20 #1

SUPPLEMENTAL PROJECT AUTHORIZING RESOLUTION OF THE TROY INDUSTRIAL DEVELOPMENT AUTHORITY (THE “AUTHORITY”) (i) AUTHORIZING THE PROVISION OF ADDITIONAL FINANCIAL ASSISTANCE WITH RESPECT TO A CERTAIN PROJECT (AS FURTHER DEFINED HEREIN) FOR THE BENEFIT OF 701 RIVER STREET ASSOCIATES, LLC (THE “COMPANY”); AND (ii) AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS AND AGREEMENTS RELATING TO THE PROJECT

WHEREAS, by Title 11 of Article 8 of the Public Authorities Law of the State of New York, as amended, and Chapter 759 of the Laws of 1967 of the State of New York, as amended (hereinafter collectively called the “Act”), the **TROY INDUSTRIAL DEVELOPMENT AUTHORITY** (hereinafter called the “Authority”) 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, pursuant to a certain Project Authorizing Resolution adopted February 16, 2018 (the “Resolution”), the Authority appointed 701 RIVER STREET ASSOCIATES, LLC (the “Company”) as agent to undertake a certain project (the “Project”) consisting of (i) the acquisition by the Authority of a leasehold interest in approximately .57 acre parcel of real property located at 701 River Street, Troy, New York 12180 and the retention of title to and/or a leasehold interest in an approximately 1.36 acre portion of a parcel of real property located on President Street, Troy, New York 12180 (collectively, the “Land”, being more particularly identified as TMID No. 90.70-5-8 and a portion of TMID No. 90.70-1-7, along with adjoining realty as may be acquired by the Company and integrated into the Project) and the existing 6-story building located at 701 River Street, along with related parking, site and infrastructure improvements located thereon (the “Existing Improvements”), (ii) the planning, design, engineering, construction, reconstruction, rehabilitation and improvement of the Land and Existing Improvements into a six story mixed use residential and commercial facility containing up to 80 apartment units and approximately 15,000 square feet of commercial space, all to be leased by the Company to residential and commercial tenants, including improvements and replacements of roofs, interior and exterior utilities, elevator, building systems, windows, exterior access and egress improvements, curbage, parking and related exterior improvements (collectively, the “Improvements”), (iii) the acquisition and installation by the Company in and around the Land, Existing Improvements and Improvements of certain items of equipment and other tangible personal property necessary and incidental in connection with the Company’s development of the Project in and around the Land, Existing Improvements and Improvements (the “Equipment”, and collectively with the Land, the Existing Improvements and the Improvements, the “Facility”); and (iv) the lease of the Facility to the Company; and

WHEREAS, the Project was undertaken by the Authority and Company pursuant to the following agreements: (i) an Agent and Financial Assistance and Project Agreement, dated as of September 11, 2018 (the “Agent Agreement”), and (ii) a Lease Agreement (the “Lease Agreement”), related Leaseback Agreement (the “Leaseback Agreement”), a certain Upland Parcel Lease Agreement (the “Upland Parcel Lease Agreement”), and related Payment-in-lieu-of-Tax Agreement (the “PILOT Agreement”), along with related documents, each dated as of December 20, 2018; and

WHEREAS, during the course of construction of the Facility, the building improvements suffered a significant accidental fire loss and casualty, which has delayed the project completion and requires the Company to re-invest significant resources and insurance proceeds to rehabilitate, repair and replace extensive portions of the Facility; and

WHEREAS, in furtherance of the foregoing, the Company submitted a supplemental Application for Financial Assistance to the Authority outlining additional amounts of sales and use tax exemption benefits and requesting the Authority’s consideration of an amendment to the Upland Parcel Lease Agreement to memorialize the Authority’s reimbursement of certain qualified Project Expenditures to assist the Company with timely completion of the Project (collectively, the “Financial Assistance”); and

WHEREAS, pursuant to a resolution adopted June 19, 2020, the Authority (i) accepted the Application submitted by the Company; (ii) approve the scheduling, notice and conduct of a Public Hearing with respect to the Project; (iii) described the Project and the Financial Assistance (as hereinafter defined) that the Authority is contemplating with respect to the Project; and (iv) approve the negotiation, but not the execution or delivery, of certain documents in furtherance of the Project, as more fully described herein; and

WHEREAS, in accordance with the resolution referenced above, the Authority duly scheduled, noticed and conducted the Public Hearing at 10:00 a.m. on July 17, 2020 whereat all interested persons were afforded a reasonable opportunity to present their views, either orally or in writing on the location and nature of the Facility and the proposed Financial Assistance to be afforded the Company in connection with the Project (a copy of the Minutes of the Public Hearing, proof of publication and delivery of Notice of Public Hearing being attached hereto as Exhibit A); and

WHEREAS, the Authority desires to authorize the provision of the Financial Assistance and has negotiated the terms of an amendment to the Agent Agreement, the Upland Parcel Lease Agreement, and related documents to effectuate the foregoing.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TROY INDUSTRIAL DEVELOPMENT AUTHORITY AS FOLLOWS:

Section 1. The Company has presented an application in a form acceptable to the Authority. Based upon the representations made by the Company to the Authority in the Company's application and in related correspondence, the Authority hereby finds and determines that:

(A) By virtue of the Act, the Authority 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 Authority has the authority to take the actions contemplated herein under the Act; and

(C) The action to be taken by the Authority will induce the Company to develop the Project, thereby increasing employment opportunities in the City of Troy, New York, and otherwise furthering the purposes of the Authority 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 Authority 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.

Section 2. The Authority hereby accepts the Minutes of the Public Hearing and approves the provision of the proposed Financial Assistance to the Company, including (i) an increase in sales and use tax exemption for materials, supplies and rentals acquired or procured in furtherance of the Project by the Company as agent of the Authority; and (ii) the Authority's reimbursement of up to \$250,000.00 in certain qualified Project Expenditures (the "Expenditures") to assist the Company with timely completion of the Project. The Financial Assistance to be provided shall be memorialized within (i) an Amendment to the Agent Agreement wherein the increased amounts of sales and use tax exemptions shall be delineated in accordance with section 3, hereof, and (ii) an Amendment to the Upland Lease Agreement wherein the Company shall be required to repay the Project Expenditures to the Authority in the form of additional rentals due thereunder (collectively, and along with related documents, the "Amendments"). The Authority further authorizes the tolling of rentals payable pursuant to the Upland Lease Agreement until the earlier of the Company closing on permanent financing for the Project or April 28, 2024, at such time the Company shall be required to pay \$100,000 in accrued rentals and reimburse all Expenditures provided by the Authority pursuant to the Amendments.

Section 3. Subject to the Company executing the Amendments, along with the delivery to the Authority of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Authority, the Authority hereby authorizes the provision of the Financial Assistance. The Authority further ratifies the prior appointment of the Company as agent of the Authority to undertake the Project, with the foregoing authorization and appointment by the Authority of the Company as agent to undertake the Project shall expire on **June 30**,

2021, unless extended by the Executive Director of the Authority upon written application by the Company.

Based upon the representation and warranties made by the Company the Application, the Authority 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 **\$9,200,000.00**, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed **\$736,000.00**. The Authority agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Authority upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Authority authorizes and conducts any supplemental public hearing(s).

Pursuant to Section 1963-b of the Act, the Authority 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 Authority 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 Authority 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 Authority 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, mortgage recording 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 Authority, cooperate with the Authority 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 Authority that the Authority demands, if and as so required to be paid over as determined by the Authority.

Section 4. The Chairman, Vice Chairman, and/or Executive Director/Chief Executive Officer of the Authority are hereby authorized, on behalf of the Authority, to execute, deliver the Amendments. The Authority further authorizes the provision of the Project Expenditures in an amount not to exceed \$250,000.00, which shall be provided to the Company as reimbursement of

qualified Project costs and repaid to the Authority in accordance with the terms of the Amendments.

Section 5. The officers, employees and agents of the Authority are hereby authorized and directed for and in the name and on behalf of the Authority 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 Authority with all of the terms, covenants and provisions of the documents executed for and on behalf of the Authority.

Section 6. These Resolutions shall take effect immediately.

SECRETARY'S CERTIFICATION

STATE OF NEW YORK)
COUNTY OF RENSSELAER)

I, Denee Zeigler, the undersigned, Acting Secretary of the Troy Industrial Development Authority (the "Authority"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Authority, including the Resolution contained therein, held on July 17, 2020, with the original thereof on file in my office, 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.

I FURTHER CERTIFY that (A) all members of the Authority had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Authority 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 rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Authority this 17th day of July, 2020.

A handwritten signature of "Denee Zeigler" in black ink, with a horizontal line through it.

EXHIBIT A
PUBLIC HEARING MATERIALS