

PROJECT AUTHORIZING RESOLUTION
(First Columbia 433 River Street, LLC Project)

A regular meeting of the Troy Industrial Development Authority (the “Authority”) was convened on May 29, 2019 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>
Heidi Knoblauch	X	
Richard Nolan	X	
Hon. Anasha Cummings		X
Elbert Watson	X	
Coleen Paratore	X	
Paul Carroll	X	
William Strang	X	
Susan Farrell		X
Tina Urzan	X	

The following persons were ALSO PRESENT: Steven Strichman, Justin Miller, Esq., Mary Ellen Flores, Luke Nathan, Matt DeFazio, Rosemary McKenna, Luis Gonzales, Diane Cretella, Deanna Dal Pos and Denee Zeigler.

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 First Columbia 433 River Street, LLC for itself or an entity to be formed.

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

Member	Aye	Nay	Abstain	Absent
Heidi Knoblauch	X			
Richard Nolan	X			
Hon. Anasha Cummings				X
Elbert Watson	X			
Coleen Paratore	X			
Paul Carroll	X			
William Strang	X			
Susan Farrell				X
Tina Urzan	X			

Resolution No. 06/19 #3

RESOLUTION OF THE TROY INDUSTRIAL DEVELOPMENT AUTHORITY (THE “AUTHORITY”) (i) AUTHORIZING THE UNDERTAKING OF A CERTAIN PROJECT (AS FURTHER DEFINED HEREIN) FOR THE BENEFIT OF FIRST COLUMBIA 433 RIVER STREET, LLC (THE “COMPANY”); (ii) ADOPTING FINDINGS PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT (“SEQRA”) WITH RESPECT TO THE PROJECT; AND (iv) 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 resolution adopted by the Authority on September 23, 2016, as supplemented by Authority resolution adopted on October 27, 2018 (collectively, the “Project Authorizing Resolution”), the Authority authorized the undertaking of a certain Project (the “Project”) for the benefit of **FIRST COLUMBIA 433 RIVER STREET, LLC** (the “Company”) consisting of (i) the retention by the Authority of a leasehold interest in an approximately 3.7 acre parcel of land located at 433 River Street in the City of Troy, New York (the “Land”, being comprised of TMID Nos 101.29-1-1.1 and 101.30-6-3) and the improvements located thereon consisting of five (5) existing buildings containing on the aggregate approximately 335,000 square feet and a surface parking lot with a capacity for approximately 300 vehicles, along with other site and infrastructure improvements located thereon (the “Existing Improvements”), (ii) the planning, design, engineering, construction, reconstruction, on the Land and Existing Improvements of up to 20,000 square feet of additional commercial space on the 9th floor of the Existing Improvements (collectively, the “Improvements”) for continued operation of the Existing Improvements and Improvements as a commercial facility leased to tenants of the Company that will directly and indirectly retain at least **930** full time jobs (the “Job Retention”), (iii) the acquisition and installation by the Company in and around the 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 leasing of the Facility back to the Company a new “Straight-lease transaction”, as defined within Section 1951(12) of the Act, whereby the Authority and Company will enter into a Lease Agreement, Leaseback Agreement and related

Payment in Lieu of Tax Agreement (“PILOT Agreement”) to be negotiated (collectively, the “Restructuring”); and

WHEREAS, pursuant to the Project Authorizing Resolution and in furtherance of the Project, the Authority and Company entered into various documents and agreements (collectively, the “Project Documents”), including, but not limited to: (i) a certain Agent and Financial Assistance and Project Agreement, dated as of October 27, 2016 (the “Agent Agreement”), (ii) a certain Leaseback Agreement, dated as of October 27, 2016 (the “Leaseback Agreement”), and (iii) a certain Amended and Restated Payment in Lieu of Tax Agreement, dated as of October 27, 2016 (the “PILOT Agreement”), each as amended pursuant to a certain Omnibus Amendment Agreement, dated as of October 27, 2018; and

WHEREAS, pursuant to the Project Authorizing Resolution and Project Documents, the Company is required to complete the Improvements on or before December 31, 2019, however, the Company has submitted a supplemental application (the “Application”) to the Authority outlining an expanded scope of improvements to be undertaken by the Company on or before December 31, 2020 and requesting the Authority’s approval of additional Financial Assistance (as defined herein) relating to same; and

WHEREAS, the Application requests the proposed Improvements to be redefined to include: the planning, design, engineering, construction, reconstruction, on the Land and Existing Improvements of (a) up to 20,000 square feet of additional commercial space on the 9th floor of the Existing Improvements to accommodate a training and event facility, (b) the expansion and renovation of the existing ground level boiler room to accommodate a brew pub/restaurant facility and related entertainment space, and (c) building-wide upgrades to mechanical systems, elevators, HVAC systems and interior tenant spaces (hereinafter and collectively, the “Updated Improvements”); and

WHEREAS, by resolution adopted April 19, 2019 (the “Initial Project Resolution”), the Authority (i) accepted the Application submitted by the Company, (ii) authorized the scheduling, notice and conduct of a public hearing with respect to the Project (the “Public Hearing”), and (iii) described the forms of financial assistance being contemplated by the Authority with respect to the Project (the “Financial Assistance”, as more fully described herein); and

WHEREAS, pursuant to the Initial Project Resolution, the Authority duly scheduled, noticed and conducted the Public Hearing at 10:00 a.m. on May 24, 2019 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, pursuant to application by the Company, the Planning Commission of the City of Troy (the “Planning Commission”), as lead agency pursuant to the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, “SEQRA”), previously reviewed the Project and adopted a negative declaration (the “Negative Declaration”) with respect to the Project, a copy of which is attached hereto as Exhibit B; and

WHEREAS, the Authority desires to amend the Project Documents and definition of "Project" to read as follows: a certain Project (the "Project") consisting of (i) the retention by the Authority of a leasehold interest in an approximately 3.7 acre parcel of land located at 433 River Street in the City of Troy, New York (the "Land", being comprised of TMID Nos 101.29-1-1./1 and 101.30-6-3) and the improvements located thereon consisting of five (5) existing buildings containing on the aggregate approximately 335,000 square feet and a surface parking lot with a capacity for approximately 300 vehicles, along with other site and infrastructure improvements located thereon (the "Existing Improvements"), (ii) the planning, design, engineering, construction, reconstruction, on the Land and Existing Improvements of (a) up to 20,000 square feet of additional commercial space on the 9th floor of the Existing Improvements to accommodate a training and event facility, (b) the expansion and renovation of the existing ground level boiler room to accommodate a brew pub/restaurant facility and related entertainment space, and (c) building-wide upgrades to mechanical systems, elevators, HVAC systems and interior tenant spaces (hereinafter and collectively (collectively, the "Improvements") for continued operation of the Existing Improvements and Improvements as a commercial facility leased to tenants of the Company that will directly and indirectly retain at least **930** full time jobs (the "Job Retention"), (iii) the acquisition and installation by the Company in and around the 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 leasing of the Facility back to the Company pursuant to a "Straight-lease transaction", as defined within Section 1951(12) of the Act; and

WHEREAS, the Authority and Company have negotiated the terms of certain amendments to the Project Documents and the Authority desires to provide financial assistance (the "Financial Assistance") to the Company in connection with the Improvements the form of (i) sales and use tax exemptions with respect to the Improvements and the Equipment; and (ii) mortgage recording tax exemption(s) related to the Company's financing of the Improvements and Equipment.

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; and

(E) The Authority has reviewed the Negative Declaration adopted by the Planning Commission and determined the Project involves an "Unlisted Action" as said term is defined under SEQRA. The review is uncoordinated. Based upon the review by the Authority of the Negative Declaration, related Environmental Assessment Form (the "EAF") and related documents delivered by the Company to the Authority and other representations made by the Company to the Authority in connection with the Project, the Authority hereby ratifies the SEQRA determination made by the Planning Commission and the Authority further 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 terms are defined in SEQRA; and (iii) no "environmental impact statement" as such quoted term is defined in SEQRA, need be prepared for this action. This determination constitutes a negative declaration in connection with the Authority's sponsorship and involvement with the Project for purposes of SEQRA.

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) a 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) mortgage recording tax exemption(s) in connection with secured financings undertaken by the Company in furtherance of the Project.

Section 3. Subject to the Company executing amendments to the Project Documents, 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 undertaking of the Project, including the acquisition of a leasehold interest in the Land and Existing Improvements pursuant to the Lease Agreement and related recording documents, the form and substance of which shall be approved as to form and content by counsel to the Authority. Subject to the within conditions, the Authority further authorizes the execution and delivery of the Leaseback Agreement, wherein the Company is authorized to undertake the construction and equipping of the Improvements and hereby appoints the Company as the true and lawful agent of the Authority: (i) to acquire, construct and equip the Improvements and

acquire and install the Equipment; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Authority 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 Authority could do if acting in its own behalf. The foregoing authorization and appointment by the Authority of the Company as agent to undertake the Project shall expire on **December 31, 2020**, 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 **\$5,037,237.50**, which result in New York State and local sales and use tax exemption benefits (“sales and use tax exemption benefits”) not to exceed **\$402,979.00**. 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 Chair, Vice Chair, and/or Executive Director/Chief Executive Officer of the Authority are hereby authorized, on behalf of the Authority, to execute, and deliver amendments to the Project Documents, including (A) the Agent Agreement, wherein the Authority will appoint the Company as agent to undertake the Project, (B) the Leaseback Agreement, pursuant to which the Authority will lease its interest in the Land, Existing Improvements, Improvements and Equipment constituting the Facility back to the Company, (C) the PILOT Agreement pursuant to which the Company shall be required to make certain PILOT Payments to the Authority for the benefit of the Affected Taxing Jurisdictions, and (D) related documents, including, but not limited to, Sales Tax Exemption Letter(s), Bills(s) of Sale and related instruments; provided the rental payments under the Leaseback Agreement include payments of all costs incurred by the Authority arising out of or related to the Project and indemnification of the Authority by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

Section 5. The Chair, Vice Chair and/or the Executive Director/Chief Executive Officer of the Authority are hereby further authorized, on behalf of the Authority, and to the extent necessary, 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 any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project and/or finance/refinance acquisition and Project costs, equipment and other personal property and related transactional costs, and, where appropriate, the Secretary or Assistant Secretary of the Authority is hereby authorized to affix the seal of the Authority to the Authority Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman, Vice Chairman and/or the Executive Director/Chief Executive Officer of the Authority shall approve, the execution thereof by the Chair, Vice Chair or the Executive Director/Chief Executive Officer of the Authority to constitute conclusive evidence of such approval; provided, in all events, recourse against the Authority is limited to the Authority's interest in the Project.

Section 6. 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 7. 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 May 29, 2019, 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 29th day of May, 2019.



EXHIBIT A
PUBLIC HEARING MATERIALS

EXHIBIT B
SEQRA MATERIALS