

AUTHORIZING RESOLUTION

At a meeting of the Herkimer County Industrial Development Agency, Herkimer County, New York (the “Agency”), held at 420 E. German Street, Herkimer, New York on the 27th day of July, 2021 at 8:00 a.m., the following members of the Agency were:

Present: Vincent J. Bono, Catherine Ricci, John Scarano,
Michael Werenczak, Ann Gaworecki

Absent: Cory Albrecht, David Chlus

Also Present: John Piseck, Anthony Hallak, Stacey Holleran, Victoria Adams

After the meeting had been duly called to order, the Chairman announced that the purpose of the meeting was to consider and take action on certain matters pertaining to Foothills Development, LLC (the “Company”).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

AYE	NAY	ABSTAINED
*ALL	*NONE	*NONE

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE ALL RELEVANT CLOSING DOCUMENTS WITH RESPECT TO THE ACQUISITION OF AN INTEREST IN THE REAL PROPERTY SITUATE IN THE TOWN OF FRANKFORT, COUNTY OF HERKIMER AND STATE OF NEW YORK AND THE PERSONAL PROPERTY TO BE ACQUIRED AND LOCATED THEREAT (the “Facility”) THROUGH LEASE AGREEMENT, LEASING SAID FACILITY BACK TO THE COMPANY AND PROVIDING FINANCIAL ASSISTANCE BY MEANS OF A PAYMENT IN LIEU OF TAX AGREEMENT ON THE IMPROVEMENTS TO BE CONSTRUCTED AND THROUGH SALES AND MORTGAGE TAX EXEMPTIONS; TO ADDRESS ENVIRONMENTAL ISSUES AND TO PROVIDE FOR INDEMNIFICATION OF THE AGENCY ON SUCH ISSUES RELATING TO THE PROJECT THROUGH THE EXECUTION OF AN ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT WITH THE COMPANY (the “ECIA”); AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.

WHEREAS, Foothills Development, LLC, on behalf of itself and/or the principals of Foothills Development, LLC (the “Company”) has applied to the Herkimer County Industrial Development Agency (the “Agency”) to enter into a transaction relating to the acquisition, construction, reconstruction and equipping of a warehousing and distribution facility on a parcel of land located at 161 Drive In Road, Frankfort, New York 13340, Herkimer County (the “Land”), and the acquisition and installation of equipment in the Improvements, all to be used by the Company and/or its Sublessee, Wilcor International, Inc. (the “Sublessee”), in connection with providing a complete and fully operational warehouse and distribution facility in support of Foothills Development, LLC (the Land, Improvements and Equipment) are referred to collectively as the “Facility” and the construction and equipping of the Improvements is referred to as (the “Project”); and

WHEREAS, the Company will lease the Facility to the Agency, pursuant to Article 18-A of the General Municipal Law of the State of New York, and Chapter 372 of the Laws on 1970 of the State of New York, as may be amended from time to time (collectively the “Act”) and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the “Leaseback Agreement”); and

WHEREAS, the Company will construct, reconstruct, renovate and equip the Project; and

WHEREAS, the Company will construct, reconstruct, renovate and equip a Warehousing and Distribution Facility under the Act; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, the Agency is authorized under its Uniform Tax Exemption Policy to provide for financial assistance to the Project; and

WHEREAS, representations made by the Company in its Application for Financial Assistance support the finding that the Project will promote employment opportunities and prevent economic deterioration in the area served by the Agency; and

WHEREAS, the Company will further sublease the Facility for operation pursuant to a Sublease Agreement (the “Sublease Agreement”) between the Company and Sublessee.

WHEREAS, based upon recommendation made by the Company in its Application, the value of financial assistance is described as follows:

Sales and Use Tax exemptions estimated at \$247,112.00 but shall not exceed \$247,112.00 in aggregate; and

Mortgage Recording Tax not to exceed \$19,155.00; and

A Payment in Lieu of Tax Agreement estimated at \$380,570.00 based on current assessment information.

WHEREAS, prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, a public hearing (the “Hearing”) was held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency, or the location or nature of the Facility, can be heard; and

WHEREAS, notice of the Hearing was given prior to the closing of a lease-leaseback transaction, and the granting of any tax benefits, and such notice (together with proof of publication) was in the form annexed hereto as **Exhibit A**; and

WHEREAS, the minutes of the Hearing are or will be annexed hereto as **Exhibit B**; and

WHEREAS, the Agency has given due consideration to the operation of a distribution facility, the employment opportunities, taxable value of project and the economic conditions of the area in which the Project is situated; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed lease-leaseback transaction is either and inducement to the Company to maintain and expand the Facility in the County or is necessary to maintain the competitive position of the Company in its industry; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “SEQR Act” or “SEQRA”), the Agency constitutes a “State Agency”; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company by virtue of its activities in renovating, reconstructing and equipping the Project shall submit, as a condition to closing, that SEQR review is not required, or in the alternative, the Environmental Assessment Form and related documents (Questionnaire) with respect to the Facility, a copy of which will be placed on file as the office of the Agency; and

WHEREAS, prior to the granting of any tax benefits, the Agency will complete its environmental review (if applicable) and make determinations for purposes of SEQRA.

Section 1. The Agency hereby finds and determines:

- (a) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes of the Act and to exercise all powers granted to it under the Act; and
- (b) The Facility constitutes a “project,” such as that term is defined in the Act; and
- (c) The acquisition, construction, equipping and financing of the Facility, and the leasing of the Facility to the Company will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Herkimer County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and
- (d) The acquisition, construction and equipping of the Facility is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and
- (e) Based upon representations of the Company, the Facility conforms with the local zoning laws and planning regulations of Herkimer County and all regional and local use plans for the area in which the Facility is located; and
- (f) It is desirable and in the public interest for the Agency to acquire a leasehold interest in the Facility and lease the Facility back to the Company; and
- (g) The Lease is an effective instrument whereby the Company conveys a leasehold interest to the Agency; and
- (h) The Leaseback Agreement is an effective instrument whereby the Company leases the Facility from the Agency; and

Section 2. In consequence of the foregoing, and subject to the receipt and approval by the Agency of pre-closing documents deemed reasonably necessary by counsel to the Agency, the Agency hereby determines to acquire a leasehold interest in the Facility from the Company and to lease the Facility back to the Company and to execute and deliver the Lease Agreement, the Leaseback Agreement and memoranda thereof, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement, the Recapture Agreement and all related documents (collectively the Closing Documents).

Section 3. The form and substance of the Closing Documents (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 4.

- (a) The Chairman, Vice Chairman, Secretary or any member of the Agency and the Executive Director, John J. Piseck, are hereby authorized, on behalf of the Agency, to execute and deliver the Closing Documents, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary, Executive Director or any member of the Agency shall approve, and such other related documents as may be, in the judgment of the Chairman and Agency Counsel, necessary or appropriate to effect the transactions contemplated by this resolution. The execution thereof by the Chairman, Vice Chairman, Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.

- (b) The Chairman, Vice Chairman, Secretary or member of the Agency and the Executive Director, John J. Piseck, are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 5. 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 or provided for by the provisions of the Closing Documents, and to execute and deliver all such additional certificates, instruments and documents, 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 resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Closing Documents binding upon the Agency.

STATE OF NEW YORK)
) ss.:
COUNTY OF HERKIMER)

I, Stacey Holleran, the undersigned Assistant Secretary of the Herkimer County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Herkimer County Industrial Development Agency (the “Agency”), including the resolutions contained therein, held on the 27th day of July, 2021 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 resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Closing Documents contained in this transcript of proceedings are each in substantially the substance presented to the Agency and/or approved by said meeting.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103a and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public and public notice of the time and place of said meeting was duly given in accordance with such Sections, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand as of this 27th day of July, 2021.

HERKIMER COUNTY INDUSTRIAL
DEVELOPMENT AGENCY



Stacey Holleran, Secretary

EXHIBIT A

EXHIBIT B