

**AMENDED AND RESTATED  
INDUCEMENT AND PROJECT RESOLUTION**

At a regular meeting of the Herkimer County Industrial Development Agency held at 420 E. German Street, Herkimer, New York, on January 31, 2023 at 8:00 A.M.

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

PRESENT: Vincent (Jim) Bono, Cory Albrecht, Ann Gaworecki, John Scarano,  
Michael Werenczak, Timothy Day, Alana Basloe

ABSENT: None

ALSO PRESENT: John Piseck, Stacey Holleran, Victoria Adams, Erin Spina,  
Anthony Hallak

The following resolution was offered and seconded with the members voting:

AYE

NAY

All

None

**RESOLUTION OF THE HERKIMER COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “AGENCY”) TAKING OFFICIAL ACTION TOWARD APPROVING UPDATED PROJECT APPLICATION AND APPOINTING FOOTHILLS DEVELOPMENT, LLC (the “COMPANY), AND THE PRINCIPALS OF THE COMPANY, AS AGENT OF THE AGENCY IN CONNECTION WITH A LEASE-LEASEBACK TRANSACTION, AUTHORIZING THE EXECUTION AND DELIVERY OF ST-60 TAX FORMS AND MAKING CERTAIN FINDINGS AND DETERMINATIONS WITH RESPECT TO THE PROJECT.**

WHEREAS, the Herkimer County Industrial Development Agency (the “Agency”) is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York Chapter 410 of the Laws of 1970 and Chapter 158 of the Laws of 1981 of the State (collectively, the “Act”) to promote, develop, encourage and assist in the constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, pollution control, commercial, research and recreation facilities for the purpose of promoting, attracting 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 (the “State”); 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 provide assistance in the construction and equipping of one or more “Projects” (as defined in the Act); and

WHEREAS, in February 23, 2021 the Agency adopted an Inducement Resolution approving an application (the “Original Application”) for financial assistance to the Company and appointing the principals of the Company as Agents; and

WHEREAS, the sales tax exemptions contemplated by the Inducement Resolution expired on May 13, 2022; and

WHEREAS, the Company has presented an updated application (the “Updated Application”) to the Agency, a copy of which was presented at this meeting and copies of which are on file at the office of the Agency, requesting that the Agency consider undertaking; (i) to provide assistance through sales tax and mortgage tax incentives for the constructing, equipping, and financing of the above described project Facility and real property tax relief in the form of a Payment in Lieu of Tax Agreement (the “Assistance”), (ii) to acquire, construct, equip, and finance the Facility or to cause the Facility to be constructed, equipped, and financed; and (iii) to lease (with an obligation to purchase) or sell the Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, due to COVID-19 and supply chain interruptions the Company was unable to complete constructing and equipping of the project Facility within the deadlines contemplated by the original Inducement Resolution and ST-60 Application; and

WHEREAS, the Facility will still consist of the acquisition, construction, and equipping of a 50,000 square foot addition to the warehouse and distribution facility and office space located at 161 Drive-In Road in the Town of Schuyler, Herkimer County, State of New York, known as Tax Map No. 105.3-2-1.1. The Project has an estimated cost of Five Million Two Hundred Eighty Nine Thousand and 00/100 Dollars (\$5,289,000.00) (the “Project Costs”); and

WHEREAS, the Updated Application requests an extension of time to utilize benefits contemplated by the Original Application and does not increase the financial assistance from the Agency to the Company; and

WHEREAS, the Agency has given due consideration to the Updated Application and to representations by the Company; and

WHEREAS, the Agency has considered the Company's request for extension for good cause and examined the requisite criterion to determine whether the proposed action or the Project is entitled to an extension; and

WHEREAS, if required by the Act, a public hearing will be duly noticed and had with respect to the Facility and the Assistance.

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

1. Based upon the Application and other representations made by the Company to the Agency and the Agency's due deliberation, the Agency hereby makes the following findings and determinations:

A. The Facility constitutes a "Project" within the meaning of the Act.

B. The Assistance will induce the Company to locate the Facility in the County, thereby maintaining and increasing employment opportunities within the State of New York and otherwise furthering the purposes of the Agency as set forth in the Act.

C. Except as is permitted by law, the Facility will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Facility from one area of 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 Facility located in the State.

D. That pursuant to IDA's Infectious Disease Extension Policy and for good cause shown:

- (i) The delay in securing equipment was unavoidable and directly related to COVID-19;
- (ii) That supply chain issues directly impacted manufacturing, shipping, delivery and material availability through the construction industry during the period of time Applicant was undertaking its Project and affected Applicant's Project;
- (iii) That the Applicant does not seek an increase in Project benefits but only an extension of time to utilize the benefits contemplated by its Original Application; and
- (iv) The scope of the Project contemplated by the Updated Application has not been increased.

2. Subject to the conducting of a public hearing, if required, pursuant to Sections 859-a and 862 of the Act and subject to the conditions set forth in the Agreement, the Company in accordance with the Agreement and where applicable its tenant or tenants, are appointed the true and lawful agents of the Agency (i) to acquire, construct, equip, and finance the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency, and in general to do all things which may be requisite or proper for completing the Facility, all with the same powers and the same validity as the Agency could do if acting in its own behalf.

3. The Project extension shall expire on April 30, 2023.

4. A copy of this resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours and notices.

5. This Resolution shall take effect immediately.

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

I, the undersigned Assistant Secretary of the Herkimer County Industrial Development Agency, do hereby certify that I have compared the foregoing extract of the minutes of the Herkimer County Industrial Development Agency (the "Agency") held on January 31, 2023 with the original thereof of file in my office, and that the same is a true and correct copy of the original and of the whole of the original insofar as the same relates to the subject matters therein referred to.

I, FURTHER CERTIFY that (i) all members of the Agency had due notice of the meeting, (ii) the meeting was in all respects duly held, (iii) pursuant to Section 99 of the Public Officers Law (Open Meetings Law), the meeting was open to the general public, and public notice of the time and place of the meeting was duly given to the public and news media in accordance with Section 99 and (iv) there was a quorum of the members of the Agency present throughout the 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 and rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 31<sup>st</sup> day of January, 2023.

**HERKIMER COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By: Stacey Holleran  
Stacey Holleran, Assistant Secretary