

**APPROVING RESOLUTION
MODIFICATIONS RELATING TO
KINGSTONIAN DEVELOPMENT, LLC PROJECT**

A regular meeting of Ulster County Industrial Development Agency (the "Agency") was convened in public session at the Ulster County Office Building, Legislative Chambers, 6th floor located at 244 Fair Street in the City of Kingston, Ulster County, New York on December 21, 2022 at 9:00 o'clock a.m., local time.

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

PRESENT:

Steven Kelley	Treasurer
Michael J. Ham	Secretary
Rachel Silverman, Esq.	Assistant Treasurer
Rashida Tyler	Assistant Secretary
Kaustubh Wahal	Member

ABSENT:

Lynn Archer	Vice Chair
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ATTENDING BY PHONE:

Diane Eynon, Ph.D.	Chair
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AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

A. Joseph Scott, III, Esq.	Agency Counsel
Amber Feaster, CPA	Ulster County Administrative Staff

The following resolution was offered by Rachel Silverman, Esq., seconded by Michael J. Ham, to wit:

Resolution No. 1222-__

RESOLUTION AUTHORIZING THE EXECUTION BY ULSTER COUNTY INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN DOCUMENTS IN CONNECTION WITH A MODIFICATION AND EXTENSION OF THE KINGSTONIAN DEVELOPMENT, LLC PROJECT.

WHEREAS, Ulster County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws 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 787 of the 1976 Laws of New York, as amended, constituting Section 923 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 commercial, manufacturing and industrial 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, in December, 2021 (the "Closing"), the Agency granted certain financial assistance to Kingstonian Development, LLC (the "Company"), a limited liability company duly organized and validly existing under the laws of the State of New York, in connection with a project (the "Project"), said Project consisting of the following: (A) (1) the acquisition of an interest in certain parcels of land containing in the aggregate approximately 2.72 acres and located on Fair and North Front Streets in the City of Kingston, Ulster County, New York (collectively, the "Land"), together with the existing improvements located thereon (collectively, the "Existing Facility"); (2) the demolition of the Existing Facility; (3) the construction of a public access pedestrian plaza on the Land (the "Plaza Improvements"); (4) the construction of an approximately 420 car parking garage (the "Parking Facility"); (5) the construction on the Land of various improvements, including approximately 143 residential units, including approximately 14 affordable housing units; approximately 9,000 square feet of commercial space, and an approximately 32-room boutique hotel (collectively, the "Facility"); and (6) the acquisition and installation therein and thereon of certain machinery, equipment and other personal property (collectively, the "Equipment"), (the Land, the Facility, the Plaza Improvements, the Parking Facility and the Equipment being collectively referred to as the "Project Facility"), all of the foregoing to be owned by the Company and operated as a mixed used residential, commercial, hotel, parking and retail facility, and any other directly and indirectly related activities; (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 certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of December 1, 2021 by and between the Agency and the Company; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement, (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of December 1, 2021 (the "Lease to Agency") by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency the Land and all improvements now or hereafter located on said portion of the Land (collectively, the "Leased Premises"); (2) a certain license agreement dated as of December 1, 2021 (the "License to Agency") by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company granted to the Agency (a) a license to enter upon the balance of the Land (the "Licensed Premises") for the purpose of undertaking and completing the Project and (b) in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a certain bill of sale dated as of December 1, 2021 (the "Bill of Sale to Agency"), which conveyed to the Agency all right, title and interest of the Company in the Equipment; (B) the Company and the Agency executed and delivered (1) a certain payment in lieu of tax agreement dated as of December 1, 2021 (the "Payment in Lieu of Tax Agreement") by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (2) a certain recapture agreement (the "Section 875 GML Recapture Agreement") by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company executed and delivered the uniform agency

project agreement dated as of December 1, 2021 (the “Uniform Agency Project Agreement”) by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency filed with the assessor and mailed to the chief executive officer of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement; (E) the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) (together with the Lease Agreement, the above-enumerated documents being collectively referred to as the “Basic Documents”); and

WHEREAS, the Basic Documents established, among other things, various milestones which must be met as conditions to receiving the Financial Assistance (the “Milestones”); and

WHEREAS, the Agency received a letter dated December 13, 2022 from the Company (the “Request Letter”), with a copy of such Request Letter being attached hereto as Exhibit A, (A) summarizing the progress made on the Project since the Closing; (B) identifying the public benefits and amenities to be included in the Project pursuant to a memorandum of agreement dated as of January 31, 2022 by and between Kingstonian Development Group, LLC and the City of Kingston, New York (the “Memorandum of Agreement,” a copy of which is attached hereto as Exhibit B, (C) indicating the Company’s inability to begin construction on the Project and meet the Milestones due to circumstances outside the Company’s or the Agency’s control, and (D) requesting that the Agency enter into a certain tolling agreement and related documents (collectively, the “Modification Agreement”) to extend the Milestones pursuant to the terms attached hereto as Exhibit C; and

WHEREAS, in connection with the Request Letter, the Agency now desires to authorize the following actions (collectively, the “Modification”): (1) to make the modifications to the Basic Documents relating to the Milestones, and (2) to make certain related amendments to the Basic Documents; and

WHEREAS, in connection therewith, the Agency and the Company desire to enter into (A) the Modification Agreement by and between the Agency and the Company and (B) certain other documents modifying the terms of the Basic Documents (the Modification Agreement and such other documents are hereinafter referred to as the “Modification Documents”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on January 20, 2021 (the “SEQR Resolution”), the Agency (A) concurred in the determination that the City of Kingston Planning Board (the “Planning Board”) is the “lead agency” with respect to SEQRA, and (B) acknowledged receipt of a negative declaration from the Planning Board issued on December 16, 2019 (the “Negative Declaration”), in which the Planning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be prepared with respect to the Project; and

WHEREAS, pursuant to SEQRA, the Agency must determine the potential environmental significance of the Modification;

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

Section 1. Pursuant to SEQRA, the Agency hereby finds and determines that:

(A) Pursuant to Section 617.5(c)(26) and (32) of the Regulations, the Modification (including but not limited to the execution and delivery of the Modification Documents) is a "Type II action" (as said quoted term is defined in the Regulations).

(B) Accordingly, the Agency hereby determines that no environmental impact statement or any other determination or procedure is required under SEQRA with respect to the Modification.

Section 2. The Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency 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.

(B) It is desirable and in the public interest for the Agency to enter into the Modification Documents.

Section 3. In consequence of the foregoing, and subject to (A) compliance with the terms and conditions in the Basic Documents, (B) evidence of current certificates of insurance acceptable to the Agency, (C) payment by the Company of all fees and expenses of the Agency in connection with the delivery of the Modification Documents, including the administrative fee of the Agency in the amount of \$110,000 and the fees of Agency Counsel, (D) agreement by the Company of the provision of status reports relating to the Project every 6 months, and (E) subject to the following additional conditions: _____, the Agency hereby determines to: (i) authorize the Modification; (ii) subject to approval of the form and substance of the Modification Documents by Agency Counsel, approve the form and substance of the Modification Documents; and (iii) authorize the execution and delivery of the Modification Documents.

Section 4. Subject to the satisfaction of the conditions described in Section 3 hereof, the Chair or Vice Chair of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Modification Documents and the other documents related thereto 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, all in substantially the forms thereof approved by Agency Counsel, with such changes, variations, omissions and insertions as the Chair or Vice Chair of the Agency shall approve, the execution thereof by the Chair or Vice Chair of the Agency to constitute conclusive evidence of such approval.

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 Modification Documents, and to execute and deliver all such additional 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 this resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Modification Documents binding upon the Agency.

Section 6. This resolution shall take effect immediately.

[remainder of the page left blank intentionally]

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

Diane Eynon, Ph.D.	VOTING	<u>YES BY PHONE</u>
Lynn Archer	VOTING	<u>ABSENT</u>
Steven Kelley	VOTING	<u>YES</u>
Michael J. Ham	VOTING	<u>YES</u>
Rachel Silverman, Esq.	VOTING	<u>YES</u>
Rashida Tyler	VOTING	<u>NO</u>
Kaustubh Wahal	VOTING	<u>YES</u>

The foregoing resolution was thereupon declared duly adopted.

[Remainder of page left blank intentionally]

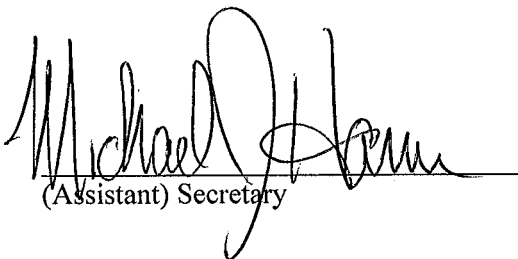
STATE OF NEW YORK)
) SS.:
COUNTY OF ULSTER)

I, the undersigned (Assistant) Secretary of Ulster County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on December 21, 2022 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 contained 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 Corporation 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 Board of Directors 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 Agency this 21st day of December, 2022.


(Assistant) Secretary

(SEAL)

EXHIBIT A
REQUEST LETTER
- SEE ATTACHED -

COUCH WHITE^{LLP}

ALITA J. GIUDA, ESQ.

agioda@couchwhite.com 518.320.3414 direct 518.426.0376 fax

December 13, 2022

VIA EMAIL AND U.S. MAIL

Ms. Diane Eynon, Ed.D.

Chair

Ulster County Industrial Development Agency

PO Box 4265

Kingston, NY 12402

eynond@gmail.com

Re: Kingstonian Development, LLC – PILOT Agreement

Dear Ms. Eynon,

This firm represents Kingstonian Development, LLC, which entered into a Payment in Lieu of Taxes (“PILOT”) Agreement and related contracts regarding the proposed Kingstonian Project with the Ulster County Industrial Development Agency (“IDA”) on December 29, 2021. I am writing this letter to request a two-year extension on certain milestones and obligations contained in the PILOT Agreement.

Since the execution of the PILOT Agreement, the Kingstonian Project has advanced the development of the Project significantly, including obtaining site plan approval from the City of Kingston Planning Board, and completing its approval processes, other than obtaining a building permit. The Project continues to include a number of significant public benefits and amenities, including at least 277 public parking spaces as part of the Project, a public plaza, public bathrooms at the plaza, an ADA-compliant pedestrian access bridge over Schwenk Drive, 14 units of affordable housing, and other benefits and amenities. Kingstonian Development, LLC has memorialized these benefits in a Memorandum of Understanding with the City of Kingston, which is attached hereto.

Unfortunately, the Project will not be in a position to commence construction in the near term. This is due to a number of issues outside the control of Kingstonian Development, LLC, including development challenges related to the COVID-19 pandemic, as well as supply chain, cost and economic issues. Of critical importance, litigation, including Article 78 proceedings, as well as several attempted temporary restraining orders and preliminary injunction applications, has been filed against the Project. Of the nearly a dozen lawsuits filed to date, at least one legal challenge has been filed for each and every approval obtained by the Kingstonian Project, including the recent site plan approval.

ALBANY, NEW YORK CITY & SARATOGA SPRINGS, NY | HARTFORD, CT
540 Broadway | PO Box 29222 | Albany, NY 12201 couchwhite.com

December 13, 2022

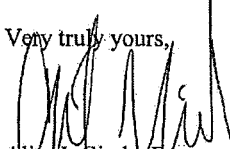
Page 2.

Although each and every petition filed has been dismissed to date, the Project opponents have sought appeals on these dismissed proceedings (including the litigation filed with respect to the subject PILOT agreement). These appeals add several months to a year, earliest, to the litigation timeframe when completed in the normal course. The Project opponents have asked for extensions of several months for a number of the appeals, which adds significant delay to concluding the litigation of the matter.

Because of these challenges, and the uncertainty of litigation, especially at this volume, Kingstonian Development, LLC cannot proceed with construction at this time. We respectfully request that the IDA grant a two year extension on the operative deadlines in light of these challenges. Specifically, we request an extension with respect to the December 2024 construction completion date. Additionally, we request that the PILOT payment schedule be frozen during the two year extension. Finally, we request consideration on the amount of payment due, the refundability of those payments (as applicable) and the deadline for full payment for the December 15 IDA administrative fee, and the Construction and monitoring fees. As you may be aware, Kingstonian Development, LLC has already paid \$110,000 of the IDA administrative fee.

Despite all of these challenges, Kingstonian Development, LLC still intends to move forward with this important Project and looks forward to continued collaboration with the IDA, the City of Kingston, and its development team to bring this Project to fruition. An extension will give the Project time to address the outstanding issues and move forward with development, including to provide the significant public benefits that Kingstonian Development, LLC has committed to. We appreciate your continuing attention and support toward the development of the Kingstonian Project. We are happy to attend the upcoming IDA meeting to answer any questions that the IDA may have, or to provide an update on the Project since we last presented at an IDA meeting. Should you require any additional information from Kingstonian Development, LLC to consider this request, please let me know.

Very truly yours,



Aljita J. Giuda, Esq.
Partner

AJG/ess

Encl.

cc: A. Joe Scott, Esq. (ascott@hodgsonruss.com)
Brad Jordan (brad@herzogs.com)
Robert Cook, Esq. (rcook@cookfirm.com)

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EXHIBIT B

MEMORANDUM OF AGREEMENT

- SEE ATTACHED -

MEMORANDUM OF AGREEMENT

This agreement is made on the 31st day of January, 2022, by and between the City of Kingston ("City") and Kingstonian Development Group, LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 2951 U.S. Route 9W, New Windsor, New York (the "Developer")

WITNESSETH:

WHEREAS, the City published a request for qualifications ("RFQ") on or about October 27, 2016, soliciting proposals for mixed-use development projects that, while implementing green building technologies, sustainable practices, and smart growth principles, would increase street-level commercial, retail or dining opportunities and residential housing units; and

WHEREAS, the RFQ acknowledged that through such a project, the City would receive public benefits commensurate with the value of real estate being offered; and

WHEREAS, the Developer is responsible for the Kingstonian Development Project (the Project), a mixed-use development proposal successfully submitted in response to the City's RFQ; and

WHEREAS the City of Kingston Common Council adopted Resolution No. 128 of 2020 in support of the Ulster County Industrial Development Agency's entering into a Payment in Lieu of Tax (PILOT) agreement with the Developer for the Project, subject to specified terms; and

WHEREAS the City of Kingston Common Council adopted Resolution No. 43 of 2021 on or about March 3, 2021, approving the transfer of 21 North Front Street to the Kingston Local Development Corporation (KLDC) to facilitate the Project; and

WHEREAS, Section 6 of Resolution 43 requires the Project to provide public parking, a public park, and public restrooms (collectively, "public amenities") as a condition of the property transfer; and

WHEREAS, Section 8 of Resolution 43 states that ownership of the transferred property would revert to the City in the event the Developer does not provide the aforementioned public amenities as part of the Project; and

WHEREAS, the Developer entered into a Land Development Agreement with the KLDC on or about August 5, 2021; and

WHEREAS, Section 2.2 of the Land Development Agreement provides that the transfer of the aforementioned property "shall be subject to a deed reverter whereby title to the City Land shall

revert back to the City in the event the City Land (i) does not contain, in whole or in part, completed construction of a minimum of 200 parking spaces” “within five(5) years from the Company Closing Date;” and “(ii) and is not continuously used, in whole or in part, for public parking with a minimum of 200 public parking spaces;” and

WHEREAS, the KLDC executed a deed on or about November 2, 2021, transferring 21 North Front Street to the Developer; and

WHEREAS, the deed incorporated by reference the August 5, 2021 Land Development Agreement, restating the parties’ agreement that “title to the City land shall revert back to the City” if the Project failed to include the aforementioned public amenities; and

WHEREAS, the City of Kingston Common Council approved Resolution No. 215 of 2021, on November 9, 2021; and

WHEREAS, Resolution 215 authorized the conveyance of easements by the City to the Developer for, among other reasons, “to allow for an ADA compliant pedestrian access bridge over Schwenk Drive;” and

WHEREAS, the easement recorded in the Office of the Ulster County Clerk on or about December 16, 2021, obligates the Developer to bear financial responsibility for all expenses associated with maintenance of the areas encompassed within the conveyance, including but not limited to such portions of the Fair Street Extension that may be abandoned to facilitate the Project; and

WHEREAS, the recorded easement expressly provides that the referenced “premises are subject to the rights of the public in and to any portion of said premises lying within the bounds of the public road known as Schwenk Drive;” and

WHEREAS, the recorded easement expressly provides that the referenced “premises are subject to any rights the City of Kingston may have for water lines, storm sewer, sanitary sewer any other public utilities lying within the bed of Fair Street Extension;” and

WHEREAS, the Developer entered into a PILOT agreement with the Ulster County Development Agency, dated as of December 1, 2021, in connection with the Project; and

WHEREAS, in addition to the agreements set forth in the above referenced documents, the Developer has made additional commitments to the City in furtherance of the Project which the parties wish to memorialize herein;

NOW, THEREFORE, the undersigned parties further affirm and agree as follows:

1. The Developer will provide 277 public parking spaces as part of the Project; and
2. The Developer will set rates and fees for the public parking garage in consultation with the City; and
3. The Developer will construct, operate, and maintain at its own expense the public plaza incorporated into the Project; and
4. The Developer will construct, operate, and maintain at its own expense the public bathrooms incorporated into the Project; and
5. The Developer will construct, operate, and maintain at its own expense the ADA-compliant pedestrian access bridge over Schwenk Drive incorporated into the Project;
6. The Developer has agreed to construct, operate, and maintain for the life of the Project 14 units of affordable housing therein; and
7. The Developer has agreed that rents for the affordable housing units will reflect the area median income percentages set forth in Schedule A; and
8. The Developer has agreed to pay a living wage of not less than \$15 per hour for all employees associated with the operation of the apartments, hotel, and garage within the Project; and

IT IS FURTHER AGREED that this agreement will be binding upon successors and assignees as though originally signed by such persons; and

IT IS FURTHER AGREED that this agreement will be governed by New York law. If any provision of this agreement is determined to be void or unenforceable, the remaining provisions will be fully enforceable according to their terms; and

IT IS FURTHER AGREED that any individual executing this Agreement on behalf of a party represents and warrants that she or he is duly authorized to execute and deliver this Agreement on behalf of such party, and this Agreement will bind such party in accordance with its terms.

IN WITNESS WHEREOF, the parties have executed this agreement on this 31st day of January 2022.

CITY OF KINGSTON

By: 
MAYOR STEVEN T. NOBLE

KINGSTONIAN DEVELOPMENT LLC

By: 
Title: Managing Member

SCHEDULE A

%AMI	HUD 2020 Fair Market Rents		Proposed Affordable Mix		
	Studio	One-Bedroom	Studio	1BR	Total
	\$ 792	\$ 967			
60%	\$475	\$580	2	0	2
80%	\$634	\$774	2	2	4
100%	\$792	\$967	2	2	4
110%	\$871	\$1,064	3	1	4
			9	5	14

EXHIBIT C

MODIFICATION TERMS

<u>Existing Date Requirements</u>	<u>Proposed Modification</u>
Agency Administrative fee equal to \$438,850 due December 15, 2022	Extend payment due date to [December 15, 2024]
Construction completion date and termination of Sales Tax Benefits scheduled for December 31, 2024	Extend the term of the Completion Date (as defined in the Lease Agreement) to terminate on [December 31, 2026]
Delivery of the Certificate of Occupancy (as defined in the Lease Agreement) due December 31, 2024	Extend the Certificate of Occupancy due date to [December 31, 2026]
Beginning of the term of the Payment in Lieu of Tax Agreement and the Real Property Tax Benefit scheduled for January, 2025	Defer the term of the Real Property Tax Benefit and the Payment in Lieu of Tax Agreement to begin in [January, 2027]
Payment of preliminary Construction Monitoring Fees of \$44,635 on the Closing Date	Refund of Construction Monitoring Fees and re-billing and collection of such fees upon commencement of construction