

RESOLUTION INDUCING THE FINANCING OF A COMMERCIAL FACILITY TO BE DEVELOPED BY ERY TENANT LLC OR AN AFFILIATE AS A HUDSON YARDS COMMERCIAL CONSTRUCTION PROJECT (STRAIGHT-LEASE) TRANSACTION AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF AGREEMENTS IN CONNECTION THEREWITH

WHEREAS, New York City Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Chapter 1082 of the 1974 Laws of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York (the “State”) and to improve their prosperity and standard of living; and

WHEREAS, ERY Tenant LLC, a real estate development company, on behalf of itself or another affiliate to be formed (the “Applicant”), has entered into negotiations with officials of the Agency in connection with (i) the Applicant’s development and construction of a platform deck over the existing railyards located on the Eastern Rail Yard of Hudson Yards, which is between West 30th and 33rd Streets between 10th and 11th Avenues, in New York, New York (the “Eastern Rail Yard”), (ii) the performance by the Applicant of other preliminary site improvements to the Eastern Rail Yard and (iii) the construction, furnishing and equipping, by the Applicant, of an approximately 3,800,000 gross square foot, LEED certified, class-A office building, which will include approximately 1,100,000 gross square feet of retail space, to be located on an approximately 417,670 square foot parcel of land of the Eastern Rail Yard (collectively, the “Facility”), all intended for use by commercial tenants (together with the Facility, the “Project”); and

WHEREAS, the Applicant has submitted to the Agency a Project Application (the “Application”) pursuant to the Hudson Yards Commercial Construction Project Program, as described in the Agency’s Uniform Tax Exemption Policy, as amended, to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Applicant and the Project, including the following: that the construction, furnishing and equipping of the Facility will generate approximately 5,733 direct construction jobs and, at full occupancy, it is estimated that over 8,400 people will be employed at the Facility in office, retail and building services and that, based upon the financial assistance provided through the Agency, the Applicant desires to proceed with the Project; and

WHEREAS, based upon the Application, the Agency hereby determines that Agency financial assistance and related benefits in the form of a straight-lease transaction between the Agency and the Applicant are necessary to induce the Applicant to proceed with the Project; and

WHEREAS, in order to finance a portion of the costs of the Project, the Applicant intends to enter into a loan arrangement with a consortium of banks or any other financial institutions acceptable to the Applicant and the Agency (collectively the “Lender”) pursuant to which the Lender will lend approximately \$1.146 billion to the Applicant, and the Agency and the Applicant will grant one or more leasehold mortgage(s) on the Facility to the Lender (collectively, the “Lender Mortgage”), with the remaining costs of the Project to be financed with mezzanine loans, equity and tenant funding; and

WHEREAS, for purposes of refinancing from time to time the indebtedness secured by the Lender Mortgage (the “Original Mortgage Indebtedness”) (whether such refinancing is in an amount equal to or greater than the outstanding principal balance of the Original Mortgage Indebtedness), the Applicant may from time to time desire to enter into new mortgage arrangements, including but not limited to consolidation with mortgages granted subsequent to the Lender Mortgage; and therefore the Applicant may request the Agency to enter into the mortgage instruments required for such new mortgage arrangements (“Refinancing Mortgages”); and

WHEREAS, in order to provide financial assistance to the Applicant for the Project, the Agency intends to grant the Applicant financial assistance through a straight-lease transaction in the form of real property tax abatements and mortgage recording tax exemptions all pursuant to the Act;

NOW, THEREFORE, NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the Project and the provision by the Agency of financial assistance to the Applicant pursuant to the Act in the form of a straight-lease transaction will promote and is authorized by and will be in furtherance of the policy of the State of New York as set forth in the Act and hereby authorizes the Applicant to proceed with the Project. The Agency further determines:

(a) that the Project shall not result in the removal of any facility or plant of the Applicant or the Company or any other occupant or user of the Project from outside of the City (but within the State of New York) to within the City or in the abandonment of one or more facilities or plants of the Applicant or any other occupant or user of the Project located within the State of New York (but outside of the City);

(b) that no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York;

(c) that the Project is located in a “highly distressed area” (which is defined in Section 854(18) of the New York General Municipal Law to include an area in which a census tract, according to the most recent census data available, has (i) a poverty rate of at least twenty percent for the year to which the data relates or at least twenty percent of households receiving public assistance and (ii) an unemployment rate of at least 1.25 times the statewide unemployment rate for the year to which the data relates);

(d) after the public hearing required by Section 859-a of the New York General Municipal Law, that undertaking the Project will serve the public purposes of the Act by increasing the overall number of permanent, private sector jobs in the State; and

(e) that, in accordance with Section 862(2)(c) of the New York General Municipal Law, the Mayor of The City of New York must confirm the actions contemplated by this Resolution prior to the Agency’s provision of any financial assistance to the Project.

Section 2. To accomplish the purposes of the Act and to provide financial assistance to the Applicant for the Project, a straight-lease transaction is hereby authorized subject to the provisions of this Resolution.

Section 3. The Agency hereby authorizes the Applicant to proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Applicant that (i) leasehold title to or other interest of the Agency in the Facility shall be in the Agency for purposes of granting financial assistance, and (ii) the Applicant is hereby constituted the agent for the Agency solely for the purpose of effecting the Project, and neither the Agency nor any of its members, directors, officers, employees, agents or servants, shall have any personal liability for any such action taken by the Applicant for such purpose.

Section 4. The execution and delivery of a Company Lease Agreement from the Company leasing the Facility to the Agency, an Agency Lease Agreement from the Agency subleasing the Facility to the Applicant (the "Lease Agreement"), the Lender Mortgage and the Refinancing Mortgages, Leasehold PILOT Mortgages from the Agency and the Applicant to the Agency securing the Applicant's obligations to make certain payments-in-lieu of real property taxes under the Lease Agreement, Assignments of Leasehold PILOT Mortgages from the Agency to Hudson Yards Infrastructure Corporation ("HYIC"), an Assignment in respect of certain payments-in-lieu of real property taxes from the Agency and The City of New York to HYIC, and the acceptance of a Guaranty Agreement from the Applicant, in favor of the Agency (the "Guaranty Agreement") (each document referenced in this Section 4 being, collectively, the "Agency Documents"), each being substantively the same as approved by the Agency for prior transactions, is hereby authorized. The Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel and Vice President for Legal Affairs of the Agency are each hereby authorized to execute, acknowledge and deliver each such Agency Document. The execution and delivery of each such agreement by one of said officers shall be conclusive evidence of due authorization and approval.

Section 5. The officers of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Applicant to assist in the Project.

Section 6. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Agency Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution or the Agency Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Agency Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, director, officer, agent or employee of the Agency in his or her individual capacity and neither the members nor the directors of the Agency nor any officer executing any Agency Document shall be

liable personally for any amounts payable thereunder or arising from claims thereon or be subject to any personal liability or accountability by reason of the execution and delivery or acceptance thereof.

Section 7. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman, Vice Chairman, Executive Director, Deputy Executive Director, General Counsel or Vice President for Legal Affairs to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by a certificate of determination of an Agency officer.

Section 8. Any expenses incurred by the Agency with respect to the Project shall be paid by the Applicant. By acceptance hereof, the Applicant agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof.

Section 9. This Resolution is subject to approval based on an investigative report with respect to the Applicant. The provisions of this Resolution shall continue to be effective for one year from the date hereof, whereupon the Agency may, at its option, terminate the effectiveness of this Resolution (except with respect to the matters contained in Section 8 hereof).

Section 10. Pursuant to the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation Law and the implementing regulations, the Agency, as lead agency, hereby makes the findings set forth in Exhibit A hereto and incorporated by reference herein.

Section 11. In connection with the Project, the Agency intends to grant the Applicant (or a special purpose entity affiliated with the Applicant and formed solely for the Project or a related real estate holding company on behalf of the Applicant) real property tax abatements and mortgage recording tax exemptions. The Agency will also utilize mortgage recording tax exemptions to exempt mortgages securing payments in lieu of real property taxes in connection with the Project. The foregoing exemptions may be transferred to subsequent purchasers of all or a portion of the Facility.

Section 12. This Resolution shall take effect immediately.

Adopted: October 15, 2013

Accepted: October 16, 2013

ERY TENANT LLC

By: 

Name: L. JAY CROSS

Title: PRESIDENT