

Anthony J. Picente Jr.
County Executive

Shawna M. Papale
Secretary/ Treasurer/
Executive Director

Timothy Fitzgerald
Assistant Secretary

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

OCIDA



584 Phoenix Drive
Rome, New York 13441-4105
(315) 338-0393, fax (315) 338-5694

David C. Grow
Chairman
Michael Fitzgerald
Vice Chairman

Ferris Betrus Jr.
Kirk Hinman
Mary Faith Messenger
Eugene Quadraro
Stephen Zogby

To: Oneida County Industrial Development Agency Board of Directors
From: Shawna M. Papale
Date: October 16, 2023
RE: OCIDA Meeting Agenda

The Oneida County Industrial Development Agency shall meet – **8:00 AM Friday, October 20, 2023**
Members of the public may attend in person at MV EDGE offices at 584 Phoenix Drive, Rome, NY 13441. The Minutes of the Agency meeting will be transcribed and posted on the OCIDA website.

1. Executive Session
2. Minutes- September 2023
3. Financials- September 2023
4. Consider a final authorizing resolution relating to the **Above Grid Rome, LLC** Facility, authorizing financial assistance in the form of reduction of real property taxes for a period of 25 years during which time the Company will pay PILOT Payments equal to \$10,000 per MW-AC (value of exemption approximately \$34,817.00), which is consistent with the Agency's Uniform Tax Exemption Policy and approving the form and execution of related documents, subject to counsel review. The Agency conducted a public hearing on October 18, 2023.
5. Consider a final authorizing resolution relating to the **NY CDG ONEIDA 2, LLC/BW Solar Inc.** Facility, authorizing financial assistance in the form of reduction of real property taxes for a period of 25 years during which time the Company will pay PILOT Payments equal to \$10,000 per MW-AC (value of exemption approximately \$1,120,396.00), which is consistent with the Agency's Uniform Tax Exemption Policy, consenting to the anticipated change of control transaction to Catalyze LLC, and approving the form and execution of related documents, subject to counsel review. The Agency conducted a public hearing on October 13, 2023.
6. Consider a resolution relating to the **B240 LLC (Air City Lofts Phase 2)** Facility, consenting to the sublease of a portion of the Facility to Babbling Brook Childcare, LLC, subject to counsel review of the proposed sublease agreement.
7. Consider a resolution extending the Agency's existing **Housing Policy** for a period of two years, through December 31, 2025. Notices were sent to the affected tax jurisdictions on October 9, 2023.
8. Annual Project Review – ECR discussion
9. Old Business
10. New Business

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Next meeting date – **FRIDAY, October 20th at 8 AM at 584 Phoenix Drive, Rome, NY**

Oneida County Industrial Development Agency
Notes to the Financial Statements
September 30, 2023

Balance Sheet:

1. Cash has decreased by 5% over the last 12 months
2. The balance in restricted cash is made up of the PILOT holdings related to the Hartford PILOT and Wolfspeed
3. The balance in accounts receivable is for 1 annual rent bill not yet received by the Agency as of 9/30 (received via ACH on 10/4) and the closing fee for Kris-Tech Wire; the project closed 9/28 but the check was not received/deposited until October
4. The \$1,000 commitment fees collected from the following for projects that have not closed as of June 2023:
 1. Central Utica Building (received November 2021)
 2. Solitude Solar, LLC (received February 2022)
 3. Collins Solar (received March 2023)
 4. Yoder Properties (received May 2023)
 5. Above Grid LLC (received September 2023)
 6. BW Solar-NY CDG Oneida 2 (received September 2023)
5. The balance in accounts payable includes the Cisco Web Ex 3-year annual subscription, quarterly insurance premiums and September staff service payments; checks were cut in October for all of the outstanding accounts payable
5. Fund balance decreased by 2% over the last 12 months

Budget Comparison Report (Income Statement):

1. Interest earned on the Berkshire Bank CD have been booked through 8/31; the Key Bank Treasury Note earnings have been booked through 6/30/23 and interest earned on the Adirondack Bank CD has been booked through 7/24/23
2. Year to date revenue is under budget; closings and application fees received to date are as follows:

1/30/2023	Solar Power Capital (SSC Kirkland)	Admin & Commitment Fee	41,580.40
2/7/2023	Kris-Tech Wire	Application Fee	500.00
3/15/2023	Fiber Instrument Sales	Admin & Commitment Fee	1,918.00
3/21/2023	Mohawk Adirondack & Northern RR Corp	Application Fee	500.00
3/21/2023	Collins Solar	Application Fee	500.00
4/28/2023	Fiber Instrument Sales	Admin Fee	418.00
5/8/2023	Yoder Properties AKA Stark Truss	Application Fee	500.00
6/20/2023	McCraith Beverages/STD Realty	Application Fee	500.00
6/29/2023	Facilities Realty Management Vernon LLC	Admin Fee	1,500.00
7/31/2023	Mohawk Adirondack & Northern RR Corp	Admin & Commitment Fee	5,000.00
9/12/2023	BW Solar- NY CDG Oneida 2	Application Fee	500.00
9/21/2023	Above Grid LLC	Application Fee	500.00
9/28/2023	Kris Tech Wire	Admin & Commitment Fee	53,875.00
9/30/2023	EDF Renewables 1	Admin Fee	500.00
9/30/2023	EDF Renewables 2	Admin Fee	500.00

Total as of 9/30/23 108,791.40

3. In 2022 \$7,500 was authorized to support Madison Oneida Boces tuition reimbursement, the 2nd invoice from Madison Oneida Boces has been received and paid; total paid is \$7,312.50

Other Significant Items to Note:

1. The IDA received all payments related to the Hartford PILOT for 2022 and payments to the jurisdictions were made in accordance with the PILOT agreement; a payment was received by Indium for the last year of the Hartford PILOT; the Agency will distribute the funds once all are billed by the jurisdictions and received by the Agency
2. The Wolfsped PILOT was due no later than 9/30 and was received by the Agency on 8/25; the allocation to the jurisdictions and EDGE were made in September in accordance with the PILOT agreement
3. A meeting has been scheduled with Rome City School District to discuss outstanding PILOT bills for the GLDC buildings and Sovena

**Oneida County Industrial Development Agency
Balance Sheet
September 30, 2023 and 2022**

	Current Year	Prior Year
Assets		
Current Assets		
Cash and Cash Equivalents	809,392	848,039 ¹
Restricted Cash - PILOT Holdings	28,672	37,445 ²
PILOT Holdings- Payment Received	(28,672)	(37,445) ²
Accounts Receivable	54,883	500 ³
Prepaid Expenses	4,079	1,115
Total Current Assets	868,354	849,654
Fixed Assets		
Furniture/Fixture/Eqpt	6,679	6,679
A/D-Furniture/Fixt/Eqpt	(6,679)	(6,679)
Total Fixed Assets	0	0
Total Assets	868,354	849,654
Liabilities & Net Assets		
Liabilities		
Current Liabilities		
Accounts Payable	31,897	3,479 ⁴
Accrued Expenses	5,625	5,250
Deferred Revenue	6,000	9,000 ⁵
Total Current Liabilities	43,522	17,729
Total Liabilities	43,522	17,729
Net Assets		
Fund Balance	424,832	431,926 ⁶
Fund Balance-Board Restricted	400,000	400,000
Total Net Assets	824,832	831,926
Total Liabilities & Net Assets	868,354	849,654

Oneida County Industrial Development Agency
 Budget Comparison Report
 Current Period: 9/1/2023 - 9/30/2023
 Budget Period: 1/1/2023 - 9/30/2023
 With Comparative Periods Ending 9/30/2022 and 9/30/2021

	Current Period Actual	Current Period Budget	Year-to-Date Actual	Year-to-Date Budget	9/30/2022	9/30/2021
Revenue						
Reimbursements	0	0	216	0	0	0
Interest Income & Miscellaneous	1,176	92	15,383 ¹	825	1,027	365
Lease Payments	(2,000)	4,563	56,250	41,063	51,000	44,750
PILOT Application / Admin Fees	55,875	23,333	108,791 ²	210,000	197,783	164,175
PILOT Clawback MSP	0	0	0	0	0	65,000
Total Revenue	55,051	27,988	180,640	251,888	249,810	274,290
Expenses						
Business Expense	300	83	1,095	750	234	65
Contracted Service-Accounting	625	625	5,625	5,625	5,250	5,250
Contracted Services - Legal	850	850	7,650	7,650	7,600	7,200
Legal Services & PILOT Clawback MSP	0	0	0	0	0	10,653
Contracted Services- Other	169	417	1,523	3,750	3,269	58,131
Marketing- Contracted Services	0	83	6,330	750	915	45
Dues & Subscriptions	0	167	1,250	1,500	1,250	1,385
Insurance - General	371	333	2,899	3,000	2,952	2,876
Special ED Projects Contingency	10,417	10,417	93,750	93,750	75,000	75,000
Tuition Agreement	0	0	3,750 ³	0	0	0
Office Supplies & Expense	0	0	280	0	510	650
Seminars & Conferences	0	250	0	2,250	3,679	1,300
Service Fees	14,700	14,700	132,300	132,300	126,000	120,000
Total Expenses	27,432	27,925	256,451	251,325	226,659	282,555
Excess or (Deficiency) of Revenue Over Expenses	27,619	62	(75,811)	562	23,151	(8,265)

**Oneida County Industrial Development Agency
Statement of Cash Flows
For the Period Ending September 30, 2023**

Cash Flows From (Used by) Operating Activities	
Increase (Decrease) in Net Assets	\$ (7,093)
Adjustments for Noncash Transactions	
Depreciation and Amortization	0
(Increase) Decrease in Assets	
Accounts Receivable	(54,383)
Accounts Receivable-PILOTs billed	0
Prepaid Expenses	(2,965)
Increase (Decrease) in Liabilities	
Accounts Payable and Accrued Liabilities	28,793
Deferred Revenue	(3,000)
PILOT Funds Due	0
Net Cash Flows From Operating Activities	<u>(38,648)</u>
 Cash Flows From (Used By) Investing Activities	
Capital Expenditures	<u>0</u>
Net Cash From (Used by) Investing Activities	0
 Cash Flows From (Used By) Financing Activities	
Repayments of Long Term Debt	0
Proceeds from Long Term Debt	<u>0</u>
Net Cash Flows (Used by) Financing Activities	0
 Net Increase (Decrease) in Cash and Cash Equivalents	(38,648)
 Cash and Cash Equivalents, Beginning of Period	848,039
 Cash and Cash Equivalents, End of Period	<u><u>\$ 809,392</u></u>

October 16, 2023

Above Grid Rome Solar, LLC

PILOT VALUE REVISED

TERMS OF FINANCIAL ASSISTANCE

Applicant Legal Name

Above Grid Rome Solar, LLC

516 Rt 33 West, Bldg 2 Suite 101, Millstone Twp, NJ 08535

Description of Project:

5 MW AC, ground-mounted solar energy array with panels connected to a single-axis tracking racking system at 5727 Rome-Taberg Road, on 50 ± acres of leased property at 5727 Rome-Taberg Rd.

Type of Facility: **Community solar**

Will Project involve the abandonment of a facility? - **No**

Sept 15, 2023 Induced Financial Assistance: **\$10,000 per MW-AC, with annual 2% incremental increase**

Revised Estimated PILOT Value: **Revised: \$34,816 (original application \$517,966)**

Length of PILOT: **25-years**

Affected Tax Jurisdictions: **Oneida County, City of Rome, Rome City School District**

Current real estate taxes or current PILOT on property: **Exempt through NYS RPTL 420 (Rome Industrial Development Corporation)**

Company Obligations for Financial Assistance: **1. HCA In Negotiation with City of Rome. 2. Proof of a bonded decommissioning plan approved by the City of Rome.**

No Job Commitments.

AboveGrid Estimated PILOT Value based upon City of Rome Assessor-Oct 5, 2023

Annual PILOT Payment **50000**

Total Assessment in 1,000s \$ 874.4920

Rates Per 1k of Assessment		Percentage	Full Taxes	PILOT
23 County	\$ 10.538131	\$ 0.180389	\$ 9,215.51	\$ 9,019.44
Town		\$ -	\$ -	\$ -
23 City	\$ 13.312040	\$ 0.227872	\$ 11,641.27	\$ 11,393.59
23-24 School	\$ 34.568795	\$ 0.591739	\$ 30,230.13	\$ 29,586.96
Total	\$ 58.418966	\$ 1.000000	\$ 51,086.92	\$ 50,000.00

Year	PILOT at \$10K Per MW	Standard Taxes Using \$874.492 assess
1	\$ 50,000.00	\$ 51,087.00
2	\$ 51,000.00	\$ 52,108.74
3	\$ 52,020.00	\$ 53,150.91
4	\$ 53,060.40	\$ 54,213.93
5	\$ 54,121.61	\$ 55,298.21
6	\$ 55,204.04	\$ 56,404.18
7	\$ 56,308.12	\$ 57,532.26
8	\$ 57,434.28	\$ 58,682.90
9	\$ 58,582.97	\$ 59,856.56
10	\$ 59,754.63	\$ 61,053.69
11	\$ 60,949.72	\$ 62,274.77
12	\$ 62,168.72	\$ 63,520.26
13	\$ 63,412.09	\$ 64,790.67
14	\$ 64,680.33	\$ 66,086.48
15	\$ 65,973.94	\$ 67,408.21
16	\$ 67,293.42	\$ 68,756.38
17	\$ 68,639.29	\$ 70,131.50
18	\$ 70,012.07	\$ 71,534.13
19	\$ 71,412.31	\$ 72,964.82
20	\$ 72,840.56	\$ 74,424.11
21	\$ 74,297.37	\$ 75,912.59
22	\$ 75,783.32	\$ 77,430.85
23	\$ 77,298.98	\$ 78,979.46
24	\$ 78,844.96	\$ 80,559.05
25	\$ 80,421.86	\$ 82,170.23
TOTAL	\$ 1,601,514.99	\$ 1,636,331.92
	PILOT Benefit	\$ 34,816.94

**ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY
COST/BENEFIT ANALYSIS
Required by §859-a(3) of the
New York General Municipal Law**

5-Oct-23

Name of Applicant: Above Grid Rome Solar LLC
516 Rt 33 West, BLD 2, Suite 101, Millship Twp NJ

Description of Project: 5 MW AC Solar Facility-5727 Rome Taberg Rd(RIDC)

Name of All Sublessees or Other Occupants of Facility: _____

Principals or Parent of Applicant: Members: James Spano, Joseph Tassone, Jr, Christopher Gage Kellogg

Products or Services of Applicant to be produced or carried out at facility: _____
solar power production

Estimated Date of Completion of Project: Oct-24

Type of Financing/ Structure: _____ Tax-Exempt Financing
_____ Taxable Financing
X Sale/ Leaseback
_____ Other

Type of Benefits being Sought by Applicant: _____ Taxable Financing
_____ Tax-Exempt Bonds
_____ Sales Tax Exemption on Eligible Expenses Until Completion
_____ Mortgage Recording Tax Abatement
X Real Property Tax Abatement

Project Costs

Land Acquisition	\$ -
Existing Building(s) ACQUISITION	\$ -
Existing Building(S) RENOVATOIN	\$ -
NEW Building(s) CONSTRUCTION	\$ -
Installation Costs	\$ 1,300,000
Site Preparation/Parking Lot Construction	\$ -
Machinery & Equipment (other than furniture)	\$ 8,884,546
Furniture & Fixtures	\$ -
Architectural & Engineering	\$ 700,000
Legal Fees (applicant, IDA, bank, other counsel)	\$ 40,000
Financial (all costs related to project financing)	\$ 58,933
Permits	\$ 100,000
Other	\$ 330,188
Agency Fee	\$ 57,068
TOTAL COST OF PROJECT	\$ 11,470,735

Page 18 of application

Assistance Provided by the Following:

EDGE Loan:	
MVEDD Loan:	
Grants - Please indicate source & Amount:	\$ 4,716,242
Other Loans - Please indicate source & Amount:	

NYSERDA and FED ITC

Company Information

Existing Jobs
Created Jobs FTE (over three years)
Retained Jobs

0
0
0

Average Salary of these Positions

\$ -
\$ -
\$ -

Earnings Information for Oneida County

Average Salary of Direct Jobs for Applicant
Average of County Indirect Jobs
Average of Construction Jobs

\$ -
\$ 25,000
\$ 32,000

Note: \$1,000,000 in construction expenditures generates 15 person - years of employment
Construction Person Years of Employment:

7

Calculation of Benefits (3 Year Period)

	Total Earnings	Revenues
Direct Jobs		
Created	\$ -	\$ -
Existing	\$ -	\$ -
Indirect Jobs		
Created	\$ -	\$ -
Existing	0	0
Construction - only one year		
Person Years	\$ 208,000	\$ 8,840
TOTALS Calculation of Benefits (3 Yr Period)	\$ 208,000	\$ 8,840

TAXABLE GOODS & SERVICES

		Spending Rate	Expenditures	State & Local Sales Tax Revenues
Direct Jobs	Created	36%	\$ -	\$ -
	Existing	0.36	\$ -	\$ -
Indirect Jobs	Created	0.36	\$ -	\$ -
	Existing	0.36	\$ -	\$ -
Construction - only one year	Person Years	0.36	\$ 74,880	\$ 7,301
<u>TOTAL TAXABLE GOODS & SERVICES</u>			\$ 74,880	\$ 7,301

Local (3 year) real property tax benefit (assuming 60% of jobs existing and created own a residence) with an average assessment of \$80,000 and the remainder of jobs existing created pay real property taxes through rent based on an average assessment per apartment of \$50,000.

Tax Rate for School District where facility is located:	\$ 34.568795
Tax Rate for Municipality where facility is located: INCL JOINT FIRE	\$ 13.3120400
Tax Rate for County:	\$ 10.538131
Total Rate:	58.418966

Municipality	
Rome	23-24
Rome Outer	23
Oneida	23

Real Property Taxes Paid: \$ -

COSTS: IDA BENEFITS

0

Real Property Taxes Abatement	\$ 34,816.94
Mortgage Tax Abated (.75%)	\$ -
Estimated Sales Tax Abated During Construction Period (8.75%)	\$ -
Total:	\$ 34,816.94

NOTE: If there is a tax-exempt financing of all or a portion of the project cost, there is a neutral cost/benefit because of lower interest rates by reason of exclusion of interest from gross income of bondholders for purposes of Federal and State income taxes. Taxable financing carries the same cost/benefit for State Income Tax purposes. Such cost/benefits cannot be quantified.

**Final Authorizing Resolution
Above Grid Rome Solar LLC
(Rome Taberg Road Solar) Facility**

Transcript Document No. []

Date: October 20, 2023

At a meeting of the Oneida County Industrial Development Agency (the "Agency") held at 584 Phoenix Drive, Rome, New York 13441 on the 20th day of October 2023, the following members of the Agency were:

Members Present:

Members Present – WebEx:

EDGE Staff Present:

EDGE Staff Present – WebEx:

Other Attendees:

Other Attendees – WebEx:

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 proposed financial assistance to Above Grid Rome Solar LLC (Rome Taberg Road Solar Project).

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

Voting Aye

Voting Nay

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, THE LEASEBACK AGREEMENT, THE PAYMENT-IN-LIEU-OF-TAX AGREEMENT, THE ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, THE RECAPTURE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE ABOVE GRID ROME SOLAR LLC (ROME TABERG ROAD SOLAR PROJECT) FACILITY LOCATED IN THE CITY OF ROME, ONEIDA COUNTY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 372 of the Laws of 1970 of the State of New York (collectively, the "Act"), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, Above Grid Rome Solar LLC, on behalf of itself and/or the principals of Above Grid Rome Solar LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in construction of an approximately 5 megawatt AC ground-mounted solar energy system/community solar array with solar panels connected to a single-axis tracking racking system consisting of two pervious gravel access roads, inverter pads, a fence surrounding the entirety of the equipment, underground wiring, and overhead utility interconnection to equipment (collectively, the "Improvements"), situated on a 50± acre portion of a 174.40± acre parcel of land located at 5727 Rome Taberg Road, City of Rome, County of Oneida (the "Land"), all for the purpose of furthering the mission of New York State renewable energy goals by providing renewable energy for consumers in the region under the New York State Community Solar Program (the Land and the Improvements are referred to collectively as the "Facility" and the construction of the Improvements is referred to as the "Project"); and

WHEREAS, the Land is leased by Rome Industrial Development Corporation (the "Owner") to the Company pursuant to a Solar Ground Lease dated August 2, 2021 (the "Ground Lease"); and

WHEREAS, the Company will lease the Facility to the Agency pursuant to a Lease Agreement in the Agency's standard form (the "Lease Agreement") and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the "Leaseback Agreement") in the Agency's standard form; and

WHEREAS, by resolution duly adopted on September 15, 2023, (the "Inducement Resolution") the Agency decided to proceed under the provisions of the Act to lease the Facility and directed that a public hearing be held and enter into the Lease Agreement and Leaseback Agreement; and

WHEREAS, after sending written notice to all affected tax jurisdictions via certified mail, which notice included a copy of the inducement resolution, the Agency

conducted a public hearing on October 18, 2023 and has received all comments submitted with respect to the Financial Assistance and the nature and location of the Facility; and

WHEREAS, the value of the Financial Assistance is described below:

- Real property tax abatement \$34,817.00 (approximately)
- Mortgage recording tax exemption Not requested

WHEREAS, the Financial Assistance is consistent with the Agency's Uniform Tax Exemption Policy (Community Solar Policy) adopted on on September 18, 2020 as amended on April 30, 2021 and March 25, 2022 (the "Policy"); and

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the Project and the Agency's leasehold interest in the Facility; and

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) as follows:

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 and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The construction and equipping of the Facility, the leasing of the Facility to the Company and the Agency's Financial Assistance with respect thereto, will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Oneida 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 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 and Company's Counsel, the Facility conforms with the local zoning laws and planning regulations of Oneida County and all regional and local land use plans for the area in which the Facility is located; and

(f) The SEQRA findings adopted by the Agency on September 15, 2023 encompassed the actions to be undertaken by this resolution and no changes have

been made since that time to the proposed action that would create new or increased adverse environmental impacts; and

(g) It is desirable and in the public interest for the Agency to undertake the Project; and

(h) The Lease Agreement, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company grants the Agency a leasehold interest in the Facility; and

(i) The Leaseback Agreement, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(j) The Payment-in-Lieu-of-Tax Agreement (the "PILOT Agreement") between the Company and the Agency, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their Agreement regarding the Company's payments in lieu of real property taxes; and

(k) The Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") between the Company and the Agency will be an effective instrument whereby the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and

(l) The Project Obligation and Recapture Agreement (the "Recapture Agreement") between the Company and the Agency will be an effective instrument whereby the Company agrees that the Financial Assistance is conditioned upon the Company meeting the stated objectives of the Project.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) acquire a leasehold interest in the Facility pursuant to the Lease Agreement, (ii) execute, deliver and perform the Lease Agreement, (iii) lease the Facility back to the Company pursuant to the Leaseback Agreement, (iv) execute, deliver and perform the Leaseback Agreement, (v) execute, deliver and perform the PILOT Agreement, (vi) execute, deliver and perform the Environmental Compliance and Indemnification Agreement, (vii) execute, deliver and perform the Recapture Agreement and (viii) provide the Financial Assistance to the Company in support of the Project, all subject to the following conditions being met prior to closing: (a) receipt of an executed Host Community Agreement between the Company and the City of Rome (the "Host Community"), (b) a decommissioning plan acceptable to the Agency and the Host Community, (c) proof that provision has been made to reserve funds for decommissioning of the Project, and (d) payment by the Company of the Agency's transaction fee and the fees and disbursements of bond counsel or transaction counsel.

Section 3. The Agency is hereby authorized to accept a leasehold interest in the real property described in Exhibit A to the Lease Agreement and the personal property described in Exhibit B to the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Lease Agreement, the Leaseback Agreement, the Environmental Compliance and Indemnification Agreement, the Recapture Agreement and the PILOT Agreement (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 5.

(a) The Chairman, Vice Chairman, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, the Leaseback Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the Recapture Agreement, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary 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 (hereinafter collectively called the "Closing Documents"). The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Secretary or member of the Agency 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 Leaseback Agreement).

Section 6. 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.

Section 7. This resolution shall take effect immediately.

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

I, the undersigned Secretary of the Oneida County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Agency, including the resolutions contained therein, held on October 20, 2023 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.

IN WITNESS WHEREOF, I have hereunto set my hand as of _____, 2023.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Shawna M. Papale, Secretary

To: BW Solar
Attn.: Dan Huntington, Senior Project Developer

Transmitted via email to and Daniel.Huntington@bwsolar.com

BW Solar, Oneida County IDA and Mohawk Valley EDGE,

We are pleased to share this indication of interest to acquire the NY CDG Oneida 2 LLC solar projects. As confirmation, Catalyze Holdings, LLC will be the purchaser of 100% of the membership interest in NY CDG Oneida 2 LLC.

Founded in 2017, Catalyze is an innovative energy-services partner and independent power producer (IPP) of renewable energy on commercial properties. In September of 2019, Catalyze secured a significant capital commitment from [EnCap Investments L.P.](#) (“EnCap”) and [Yorktown Partners LLC](#) (“Yorktown”), supporting Catalyze’s ambitious goal of transforming commercial real estate into smart energy infrastructure.

Our team has extensive experience in developing and delivering turnkey renewable energy solutions that integrate market supply knowledge with distributed energy assets, especially within the New York Market. As you consider the Pilot ownership transfer, you should be confident in the following factors that differentiate Catalyze::

- Leadership
 - Market Knowledge
 - Industry Vision
 - Solution Experience
 - Risk Management
- Scalability
 - Financial Stability
 - Partner & Portfolio Emphasis
 - Support Commitment
 - Flexibility and Rapid Response Capability

It is important to note that we are intimately familiar with development, construction, and operation of solar assets in the Northeast, with a significant active pipeline of projects in New York State. Please see the attached list of active NYS projects as well as our references with development partners.

Best,



Jared Haines, VP of Business & Project Development



Exhibit A – 2022 New York Projects

<i>2022 Catalyze Projects (NY)</i>				
<i>Project Name</i>	<i>Status</i>	<i>System Size (kWdc)</i>	<i>State</i>	<i>Utility</i>
<i>NY SPENCER</i>	Pre-NTP Applications & Permits	5461.56	NY	New York State Elec & Gas Corp
<i>NY SPRINGFIELD CENTER</i>	Pre-NTP Applications & Permits	7497.36	NY	New York State Elec & Gas Corp
<i>NY WHITE PLAINS</i>	Pre-NTP Applications & Permits	5000	NY	Consolidated Edison Co-NY Inc
<i>NY FLUSHING</i>	Pre-NTP Applications & Permits	288.75	NY	Consolidated Edison Co-NY Inc
<i>NY FLUSHING</i>	Pre-NTP Applications & Permits	161.95	NY	Consolidated Edison Co-NY Inc
<i>NY HERMON</i>	Pre-NTP Applications & Permits	2,442.42	NY	National Grid - New York
<i>NY FABIUS</i>	Pre-NTP Applications & Permits	5,840.00	NY	National Grid - New York
<i>NY NEW HARTFORD</i>	Pre-NTP Applications & Permits	4,478.76	NY	National Grid - New York
<i>NY MOHAWK</i>	Pre-NTP Applications & Permits	6,520.00	NY	National Grid - New York
<i>NY TARRYTOWN</i>	Pre-NTP Applications & Permits	5,000.00	NY	Consolidated Edison Co-NY Inc
<i>NY ALTONA 1</i>	Pre-NTP Applications & Permits	7,500.00	NY	New York State Elec & Gas Corp
<i>NY ALTONA 2</i>	Pre-NTP Applications & Permits	7,500.00	NY	New York State Elec & Gas Corp
<i>NY PORT CHESTER</i>	Pre-NTP Applications & Permits	4,000.00	NY	Consolidated Edison Co-NY Inc
<i>NY PURCHASE</i>	Pre-NTP Applications & Permits	5,000.00	NY	Consolidated Edison Co-NY Inc
<i>NY FRANKFORT</i>	Final Design & Engineering	5,335.20	NY	National Grid - New York
<i>NY CHENANGO FORKS</i>	Final Design & Engineering	6,500.00	NY	New York State Elec & Gas Corp
<i>NY BRONX</i>	Final Design & Engineering	4,288.00	NY	Consolidated Edison Co-NY Inc
<i>NY BREESPORT</i>	Final Design & Engineering	5,237.65	NY	New York State Elec & Gas Corp
<i>NY SPENCER</i>	Final Design & Engineering	7,440.12	NY	New York State Elec & Gas Corp
<i>NY BEAVER DAMS</i>	Final Design & Engineering	7,450.00	NY	New York State Elec & Gas Corp
<i>NY FLUSHING</i>	Final Design & Engineering	213.70	NY	Consolidated Edison Co-NY Inc
<i>NY AFTON</i>	Final Design & Engineering	5,896.00	NY	New York State Elec & Gas Corp
<i>NY SHERMAN 2</i>	Pre-Construction	6,912.00	NY	National Grid - New York
<i>NY SHERMAN 1</i>	Pre-Construction	6,428.00	NY	National Grid - New York
<i>NY POTSDAM</i>	Pre-Construction	6,388.20	NY	National Grid - New York
<i>NY GRAND ISLAND</i>	Pre-Construction	5,700.24	NY	National Grid - New York
<i>NY FREDONIA</i>	Installation	6,240.00	NY	National Grid - New York
<i>NY LANCASTER 1</i>	Installation	6,631.70	NY	New York State Elec & Gas Corp
<i>NY LANCASTER 2</i>	Installation	6,005.25	NY	New York State Elec & Gas Corp
<i>NY SELKIRK</i>	Installation	6,809.40	NY	National Grid - New York
<i>NY GENESEO</i>	Installation	6,760.26	NY	National Grid - New York
<i>NY AMHERST</i>	Operation	6,378.75	NY	National Grid - New York
<i>NY HARRISON</i>	Operations	221.2	NY	Consolidated Edison Co-NY Inc
<i>NY KINGSTON</i>	Operations	950	NY	Central Hudson Gas & Elec Corp
<i>NY STATEN ISLAND</i>	Operations	493	NY	Consolidated Edison Co-NY Inc
2022 MW	Total	174,969.47		
2022 MW	In Installation/Operations	40,489.56		



Exhibit C – Development Partner References

US Light Energy
Mark Richardson, CEO
(518) 965-4148
mrichardson@uslightenergy.com

USLE transacted with Catalyze on 5 Upstate NY projects pre-NTP, which Catalyze is currently co-developing the projects through permitting.

OurGeneration
Elie Schechter, Managing Member
(914) 420.5803
eschecter@ourgeneration.dev

OurGeneration transacted with Catalyze on (2) Upstate NY projects pre-NTP, which have been co-developed and are currently in construction, as well (9) additional Upstate NY projects, which we are mobilizing to construct.

Solar Liberty
Adam Rizzo, Founder
(866)807-3639 ext. 101
akrizzo@solarliberty.com

Solar Liberty transacted with Catalyze on (3) Upstate NY projects at NTP which have mobilized for construction, and an additional (4) Upstate NY projects are pending transaction



APPLICATION FOR FINANCIAL ASSISTANCE

Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441-1405
(315) 338-0393 telephone
(315) 338-5694 fax
Shawna M. Papale, Executive Director
spapale@mvedge.org

Please submit the signed and notarized completed application (Pages 1-25 ONLY), which must include any applicable addendum or supplemental information requested in the application, along with payment of a non-refundable \$500 Application Fee and a \$1,000 Commitment Fee (will be applied to final closing costs) to the Oneida County Industrial Development Agency, 584 Phoenix Drive, Rome NY 13441-1405, within 14 days prior to the OCIDA Board of Directors meeting at which you want the Application to be included on the Agenda. Wire transfer and ACH payments are acceptable but all related fees incurred by the Agency are payable by the Applicant. An electronic version of the application must accompany the original application via physical media or e-mail.

NY CDG Oneida 2 LLC

Project Name

Date of Submission

Important Notes to Applicant:

Upon the submission of this application to the OCIDA, the application becomes a public document. Be advised that any action brought before the Agency is public information. All agendas for the OCIDA are issued publicly prior to the full agency meeting. Upon the submission of this application to the OCIDA, the application becomes a public document and OCIDA is required by law to post on its website and make available to the public this Application and supporting materials. If when completing this Application, you deem any information to be specifically exempted from disclosure under Article Six of the Public Officers Law, please answer the question "This information is deemed to be exempt from disclosure under Article Six of the Public Officers Law and is submitted on the attached confidential addendum." It is acceptable to submit any confidential addendum electronically as a .pdf file separate from the application, but any confidential addendum must still be submitted with the hard copy of the full application (see Page 1). Please answer any such questions on a separate Addendum titled, "Confidential and Protected by Article Six of the Public Officers Law." If OCIDA is challenged to produce any information the Applicant identifies as protected, the Applicant will be required at its sole cost to defend such assertion on behalf of OCIDA.

The information requested by this application is necessary to determine the eligibility of your project for OCIDA benefits. Please answer all questions and respond "Not Applicable", "NA", or "none" where appropriate. If you're response is an estimate, please indicate so. Attach additional sheets if more space is needed for a response. **All applications must include a completed and signed NYS SEQR form and Cost Benefit Analysis form (please consult with OCIDA) before the application is considered complete.**

By signing and submitting this Application, the Applicant acknowledges that it received a copy of the Uniform Tax Exemption Policy and the Oneida County IDA Penalty for Failure to Meet Employment Levels as adopted by the Agency and Agency Memorandums pertaining to the benefits of projects financed through the Agency.

A project financed through the Agency involves the preparation and execution of significant legal documents. Please consult with an attorney before signing any documents in connection with the proposed project. You will receive an engagement letter from the OCIDA legal counsel. You will be asked to sign the engagement letter acknowledging you will be responsible for all legal fees of OCIDA legal counsel and that you understand the process. Should you not close and legal services have been rendered by the OCIDA legal counsel, Applicant will be responsible for those costs.

If your project requires a public hearing, a representative of the applicant is required to be present. A date will be coordinated by the OCIDA legal counsel.

If you have any questions how to calculate the OCIDA's application fee please refer to the enclosed Memorandum to Companies -Sale Leaseback Transactions or contact the OCIDA.

Part I: Applicant Information

Note: In responding to the following questions, please keep in mind that the Applicant will be party to all of the documents and is the individual or if entity will be formed which will receive the actual financial assistance from the Agency.

Applicant

1(a) Applicant's Legal Name: NY CDG Oneida 2 LLC

1(b) Principal Address: 800 Gessner Rd., Ste. 700
Houston, TX, 77024

1(c) Telephone/Facsimile Numbers: 914-275-2831

1(d) Email Address: matt.effler@catalyze.com

1(e) Federal Identification Number: _____

1(f) Contact Person: Matt Effler

1(g) Is the Applicant a Corporation: If Yes, Public Private
If public, on which exchange is it listed?
 Subchapter S
 Sole Proprietorship
 General Partnership
 Limited Partnership
 Limited Liability Corporation/Partnership
 Single-Member LLC (name and EIN below):

Name: NY CDG Oneida 2 LLC

EIN #: 37-2004262

DISC
 Other(specify) _____

1(h) State of Organization (if applicable) Delaware

Applicant's Stockholders, Members, Directors and Officers, Partners.

2(a) Provide the following information with respect to any person with 15% or more in equity holdings in any entity in ownership chain of the project. Add additional sheets if necessary.

<u>Name</u>	<u>Address</u>	<u>Percentage of Ownership</u>
Catalyze Holdings, LLC - 800 Gessner Rd., Ste. 700, Houston, TX, 77024 - 100%		

2(b) Is the Applicant, or any of the individuals listed in 2(a) above, related directly or indirectly to any other entity by more than 50% common ownership? **If Yes**, indicate name of such entity and the relationship. Yes No

Catalyze Holdings, LLC owns other companies that are working in Oneida County

2(c) Is the Applicant affiliated with any other entity, directly or indirectly, other than as listed in the response to 2(a) above? **If Yes**, please indicate name and relationship of such other entity and the address thereof: Yes No

Applicant's Counsel and Accountant

3(a) Applicant's Attorney

Name/Title: Dan Spitzer / Partner
Firm: Hodgson Russ LLP
Address: 140 Pearl Street, Suite 100
Buffalo, NY 14202
Telephone/Fax: 716-856-4000
Email: dspitzer@hodgsonruss.com

3(b) Applicant's Accountant

Name/Title: Chris Taylor
Firm: Catalyze Holdings
Address: 800 Gessner Rd., Ste. 700
Houston, TX, 77024
Telephone/Fax: 979-292-5519
Email: chris.taylor@catalyze.com

Business Description

4(a) Describe the nature of your business and principal products and/or services. Attach additional sheets if necessary.

Development, construction, ownership, financings and operation and maintenance of photovoltaic(PV) solar energy generating facility.

Anthony J. Picente Jr.
County Executive

Shawna M. Papale
Secretary/Executive Director

Timothy Fitzgerald
Assistant Secretary

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

OCIDA



584 Phoenix Drive,
Rome, New York 13441-4105
(315) 338-0393, fax (315) 338-5694
info@mvedge.org www.mvedge.org

David C. Grow
Chairman

Michael Fitzgerald
Vice Chairperson

Mary Faith Messenger
Treasurer

Ferris Betrus, Jr.
Kirk Hinman
Eugene Quadraro
Stephen Zogby

TO: OCIDA Board of Directors

FROM: Mark Kaucher

DATE: Friday October 13, 2023

RE: BW Solar Holdings, Inc.
Friday October 13, 2023 Public Hearing Minutes
584 Phoenix Drive, Rome NY and WebEx

Representing the Agency: Mark Kaucher, Timothy Fitzgerald

Other Attendees via WebEx: Dan Huntington and Gareth McDonald, BW Solar Holdings, Inc.; Robert Ryan, Harris-Beach

Public hearing opened at 11:00 AM

Reading of the public hearing notice was waived, upon consensus of the attendees.

No comments were made.

Public Hearing was closed at 11:12 AM

**Final Authorizing Resolution
NY CDG Oneida 2 LLC
(Martin Street Solar) Facility**

Transcript Document No. []

Date: October 20, 2023

At a meeting of the Oneida County Industrial Development Agency (the "Agency") held at 584 Phoenix Drive, Rome, New York 13441 on the 20th day of October 2023, the following members of the Agency were:

Members Present:

Members Present – WebEx:

EDGE Staff Present:

EDGE Staff Present – WebEx:

Other Attendees:

Other Attendees – WebEx:

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 proposed financial assistance to NY CDG Oneida 2 LLC (Martin Street Solar Project) and consent to change of control.

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

Voting Aye

Voting Nay

RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE THE LEASE AGREEMENT, THE LEASEBACK AGREEMENT, THE PAYMENT-IN-LIEU-OF-TAX AGREEMENT, THE ENVIRONMENTAL COMPLIANCE AND INDEMNIFICATION AGREEMENT, THE RECAPTURE AGREEMENT AND RELATED DOCUMENTS WITH RESPECT TO THE NY CDG ONEIDA 2 LLC (MARTIN STREET SOLAR PROJECT) FACILITY LOCATED IN THE CITY OF ROME, ONEIDA COUNTY AND CONSENTING TO A CHANGE OF CONTROL.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended and Chapter 372 of the Laws of 1970 of the State of New York (collectively, the “Act”), the Agency was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, NY CDG Oneida 2 LLC, on behalf of itself and/or the principals of NY CDG Oneida 2 LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the “Company”) has applied to the Oneida County Industrial Development Agency (the “Agency”) to enter into a transaction in which the Agency will assist in construction of an approximately 3.3 megawatt AC ground mounted photovoltaic solar facility consisting of racking and foundations, inverters and transformers, necessary electrical interconnections and all improvements and connections required to transfer and deliver generation offsite, access road, security fencing and gating, safety signage and solar photo voltaic (“PV”) panels (collectively, the “Improvements”), situated on a 18± acre portion of a 41± acre parcel of land located at 6821 Martin Street, City of Rome, County of Oneida (the “Land”), all for the purpose of furthering the mission of New York State renewable energy goals by providing renewable energy for consumers in the region under the New York State Community Solar Program (the Land and the Improvements are referred to collectively as the “Facility” and the construction of the Improvements is referred to as the “Project”); and

WHEREAS, the Land is leased by Teresa Campanaro (the “Owner”) to the Company pursuant to an Option to Lease dated January 13, 2021 (the “Ground Lease”); and

WHEREAS, the Company will lease the Facility to the Agency pursuant to a Lease Agreement in the Agency’s standard form (the “Lease Agreement”) and the Agency will lease the Facility back to the Company pursuant to a Leaseback Agreement (the “Leaseback Agreement”) in the Agency’s standard form; and

WHEREAS, by resolution duly adopted on September 15, 2023, (the “Inducement Resolution”) the Agency decided to proceed under the provisions of the Act to lease the Facility and directed that a public hearing be held and enter into the Lease Agreement and Leaseback Agreement; and

WHEREAS, after sending written notice to all affected tax jurisdictions via certified mail, which notice included a copy of the inducement resolution, the Agency

conducted a public hearing on October 13, 2023 and has received all comments submitted with respect to the Financial Assistance and the nature and location of the Facility; and

WHEREAS, the value of the Financial Assistance is described below:

- Real property tax abatement \$1,120,396.00 (approximately)
- Mortgage recording tax exemption Not requested

WHEREAS, the Financial Assistance is consistent with the Agency's Uniform Tax Exemption Policy (Community Solar Policy) adopted on on September 18, 2020 as amended on April 30, 2021 and March 25, 2022 (the "Policy"); and

WHEREAS, the Company has advised the Agency that it is anticipated that the Company will sell all or substantially all of its assets to Catalyze, LLC ("Catalyze") prior to the closing of the transaction with the Agency (the "Change of Control"); and

WHEREAS, the Company has provided to the Agency information regarding the principals of Catalyze and has requested the Agency consent to the Change of Control;

WHEREAS, the Company has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities which may arise in connection with the Project and the Agency's leasehold interest in the Facility; and

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) as follows:

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 and provisions of the Act and to exercise all powers granted to it under the Act; and

(b) The Facility constitutes a "project", as such term is defined in the Act; and

(c) The construction and equipping of the Facility, the leasing of the Facility to the Company and the Agency's Financial Assistance with respect thereto, and consent to the Change of Control will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Oneida 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 construction and equipping of the Facility and the consent to the Change of Control 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 and Company's Counsel, the Facility conforms with the local zoning laws and planning regulations of Oneida County and all regional and local land use plans for the area in which the Facility is located; and

(f) The SEQRA findings adopted by the Agency on September 15, 2023 encompassed the actions to be undertaken by this resolution and no changes have been made since that time to the proposed action that would create new or increased adverse environmental impacts; and

(g) It is desirable and in the public interest for the Agency to undertake the Project and consent to the Change of Control; and

(h) The Lease Agreement, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Company grants the Agency a leasehold interest in the Facility; and

(i) The Leaseback Agreement, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency leases the Facility back to the Company; and

(j) The Payment-in-Lieu-of-Tax Agreement (the "PILOT Agreement") between the Company and the Agency, in form satisfactory to the Chairman and Agency Counsel, will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their Agreement regarding the Company's payments in lieu of real property taxes; and

(k) The Environmental Compliance and Indemnification Agreement (the "Environmental Compliance and Indemnification Agreement") between the Company and the Agency will be an effective instrument whereby the Company agrees to comply with all Environmental Laws (as defined therein) applicable to the Facility and will indemnify and hold harmless the Agency for all liability under all such Environmental Laws; and

(l) The Project Obligation and Recapture Agreement (the "Recapture Agreement") between the Company and the Agency will be an effective instrument whereby the Company agrees that the Financial Assistance is conditioned upon the Company meeting the stated objectives of the Project.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) acquire a leasehold interest in the Facility pursuant to the Lease Agreement, (ii) execute, deliver and perform the Lease Agreement, (iii) lease the Facility back to the Company pursuant to the Leaseback Agreement, (iv) execute, deliver and perform the Leaseback Agreement, (v) execute, deliver and perform the PILOT Agreement, (vi) execute, deliver and perform the Environmental Compliance and Indemnification Agreement, (vii) execute, deliver and perform the Recapture Agreement; (viii) consent

to the Change of Control; and (ix) provide the Financial Assistance to the Company in support of the Project, all subject to the following conditions being met prior to closing: (a) receipt of an executed Host Community Agreement between the Company and the City of Rome (the "Host Community"), (b) a decommissioning plan acceptable to the Agency and the Host Community, (c) proof that provision has been made to reserve funds for decommissioning of the Project, and (d) payment by the Company of the Agency's transaction fee and the fees and disbursements of bond counsel or transaction counsel.

Section 3. The Agency is hereby authorized to accept a leasehold interest in the real property described in Exhibit A to the Lease Agreement and the personal property described in Exhibit B to the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition are hereby approved, ratified and confirmed.

Section 4. The form and substance of the Lease Agreement, the Leaseback Agreement, the Environmental Compliance and Indemnification Agreement, the Recapture Agreement and the PILOT Agreement (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 5.

(a) The Chairman, Vice Chairman, Secretary or any member of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Lease Agreement, the Leaseback Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement and the Recapture Agreement, all in substantially the forms thereof presented to this meeting with such changes, variations, omissions and insertions as the Chairman, Vice Chairman, Secretary 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 (hereinafter collectively called the "Closing Documents"). The execution thereof by the Chairman, Vice Chairman, or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Vice Chairman, Secretary or member of the Agency 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 Leaseback Agreement).

Section 6. 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.

Section 7. This resolution shall take effect immediately.

[end of resolution]

DRAFT

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

I, the undersigned Secretary of the Oneida County Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY:

That I have compared the annexed extract of the minutes of the meeting of the Agency, including the resolutions contained therein, held on October 20, 2023 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.

IN WITNESS WHEREOF, I have hereunto set my hand as of _____, 2023.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Shawna M. Papale, Secretary

B240 LLC

18 Division Street, Suite 401
Saratoga Springs, New York 12866
(518) 992-4406

SUBTENANT PROPOSAL TO ONEIDA COUNTY IDA

- 1. NAME OF TENANT:** Babbling Brook Childcare Inc.
- 2. SQUARE FOOTAGE OCCUPIED:** 4,783 SF
- 3. TERM OF LEASE AND ANY OPTIONS:** 10 year initial term; 2 5- year extensions
- 4. SUMMARY OF BUSINESS OPERATIONS:** Daycare Center
- 5. INSURANCE LIMITS (and certificate of insurance naming IDA as additional insured, when available):** Click or tap here to enter text.

902. Coverage by Subtenant.

Subtenant shall, during the Term, keep in full force and effect a policy of comprehensive commercial general liability insurance with respect to the Demised Premises and the business operated by Subtenant and any Sub-Subtenants of Subtenant in the Demised Premises in which the limits of bodily injury liability and property damage liability shall be not less than ONE MILLION DOLLARS (\$1,000,000.00) combined single limit per occurrence and THREE MILLION DOLLARS (\$3,000,000.00) in the aggregate, and a policy of insurance covering Subtenant's personal property and trade fixtures , and full coverage for plate glass in the amount of FIFTY THOUSAND DOLLARS (\$50,000.00) or such higher amounts as may be reasonably required by Sublessor. Coverage under the Subtenant's policy is to include products, personal injury (employee's exclusion to be voided), blanket contractual and broad form comprehensive general liability. The policy shall name Sublessor, any person, firms or corporations designated by Sublessor, Agent, and Subtenant as insured. If Subtenant shall not comply with its covenants made in this section, Sublessor may, at its option, cause insurance as aforesaid to be issued and in such event, Subtenant agrees to pay the premium for such insurance promptly upon Sublessor's demand, as additional rent. Subtenant shall first furnish to Sublessor copies of policies or certificates of insurance evidencing the required coverage prior to the Sublease Commencement Date and thereafter prior to each policy renewal date. All policies required of Subtenant hereunder shall contain a provision whereby the insurer is not allowed to cancel or materially change the coverage without first giving thirty (30) days written notice to Sublessor.

- 6. JOB CREATION:** ESTIMATED 15 FTE.

- 7. BASE RENT SCHEDULE:** Year 1 \$82,650; 2% annual escalations. **CONFIDENTIAL**

**Resolution
Extension of Housing Policy**

RESOLUTION OF THE ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY AUTHORIZING THE
EXTENSION OF ITS UNIFORM TAX EXEMPTION POLICY
– HOUSING POLICY

WHEREAS, Oneida County Industrial Development Agency (the “Agency”) adopted a Uniform Tax Exemption and Agency Benefits Policy -- Market Rate Rental Housing Development Initiatives, effective March 1, 2015 and revised on April 20, 2018 (the “Housing Policy”); and

WHEREAS, the purpose of the Housing Policy is to encourage development of specific types of market rate rental housing that will attract a new work force to reside within Oneida County, which employment opportunities are being created by several economic development projects in Oneida County, thereby promoting employment opportunities and preventing economic deterioration; and

WHEREAS, the Housing Policy states it was intended to terminate December 31, 2023 unless OCIDA elects to extend or modify the Housing Policy; and

WHEREAS, the Agency wishes to extend the Housing Policy in its current form for a period of two years while it works with the County of Oneida and local taxing jurisdictions to determine the status of the current housing demands of the region; and

WHEREAS, on October __, 2023 the Agency delivered notices to all affected tax jurisdictions describing the proposed extension of the Housing Policy and providing the opportunity to provide comments to the Agency prior to considering this resolution; and

WHEREAS, the Agency has received and taken under advisement all comments submitted by the tax jurisdictions.

NOW, THEREFORE, BE IT RESOLVED by the Oneida County Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. The Housing Policy is hereby extended, in its current form, through December 31, 2025.

Section 2. The Agency is hereby authorized and directed to continue to work with the County of Oneida and other local taxing jurisdictions to review the current housing demands of Oneida County to make

recommendations regarding the modification, termination or further extension of the Housing Policy, all for the public good and in furtherance of the Agency's mission.

Section 3. The Chairman of the Agency is hereby authorized and directed to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 4. This resolution shall take effect immediately.

DRAFT

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

I, the undersigned Secretary of the Oneida County Industrial Development Agency DO HEREBY CERTIFY THAT:

I have compared the foregoing copy of a resolution of the Oneida County Industrial Development Agency (the "Agency"), with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.

Such resolution was passed at a meeting of the Agency duly convened on October 20, 2023 at eight a.m., local time, at Rome, New York which the following members were:

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

and, therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) the meeting was open for the public to attend in person and public notice of the time and place of said meeting was duly given, (iii) the meeting in all respects was duly held, and (iv) there was a quorum present throughout the meeting.

IN WITNESS WHEREOF, I have hereunto set my hand on _____, 2023

Shawna Papale, Secretary

DRAFT

Anthony J. Picente Jr.
County Executive

Shawna M. Papale
Secretary/Executive Director

Timothy Fitzgerald
Assistant Secretary

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

OCIDA



584 Phoenix Drive,
Rome, New York 13441-4105
(315) 338-0393, fax (315) 338-5694
info@mvedge.org www.mvedge.org

David C. Grow
Chairman

Michael Fitzgerald
Vice Chairperson

Mary Faith Messenger
Treasurer

Ferris Betrus, Jr.
Kirk Hinman
Eugene Quadraro
Stephen Zogby

TO: OCIDA Board of Directors

FROM: Mark Kaucher

DATE: June 12, 2023

RE: December 31, 2022 Annual Report Job Shortfall Review

There are currently four companies in Shortfall status. Specific information for each project are detailed below.

2022 Annual Report Jobs Review						
* Project Name	* # of FTEs before IDA status	* Original estimate of jobs to be created	* Original estimate of jobs to be retained	* 12/31/22 # of FTEs	Current Jobs Per Letter	Not meeting 80% minimum
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ECR international

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2201 Dwyer Avenue
Utica, NY 13501
www.ecrinternational.com

Oneida County IDA
Ms. Shawna Papale
584 Phoenix Drive
Rome, NY 13441

RE: ECR Job Shortfall

Dear Shawna,

When preparing the PILOT program in 2020 ECR International was not aware that our parent company BDR Thermea was in transition of selling their shares in ECR International. BDR had decided to put ECR International due to the European market has changed considerably from high efficiency condensing boilers to decarbonization and electrification. New laws and regulations in Europe are moving away from these boilers and moving toward Heat Pumps. BDR is investing in laboratories to design and develop heat pumps. The North American market has not "caught" up with the European market regarding Heat Pumps and decarbonization therefore BDR felt the ownership of ECR International did not meet the corporate goals. In August of 2021 Terravest Industries out of Quebec purchased 100% of ECR International's shares.

At the time of the original PILOT ECR International (Utica Division) employed 149 individuals. As of the December 31st, 2021, reporting there were 162 employees (permanent and temporary). Terravest has a different business strategy and started by reviewing our product offerings and made some decision on which lines we would discontinue to manufacture and support. Our AC line has been discontinued and we will only buy resell AC moving forward. Due to the discontinuance of the AC line in April of 2022 ECR International let go 14 salary positions.

Terravest believes in automation and has invested over \$2,000,000 in the Dunkirk facility with a robotic cell that manufactures our cast iron heat exchangers then feeds the cast iron assembly line making it one continuous operation. As of June 19, 2023, all manufacturing of cast iron boilers has been transitioned to our Dunkirk Facility. The Utica facility still manufactures our condensing boilers and is warehouse distribution for our finished goods and parts business. A majority of our salary personnel (65%) are located in the Utica facility, as of today the Utica facility is currently employing 75 employees with an additional 19 on layoff status.

Please don't hesitate to contact me if you need anything further.

Sincerely,

Debbie Dam
Executive Director of Administration
debbie.dam@ecrinternational.com
315-731-4137

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Transcript Document No. 6

JOB CREATION AND RECAPTURE AGREEMENT

THIS JOB CREATION AND RECAPTURE AGREEMENT, dated as of June 1, 2020 is made by and among **ECR PROPERTIES, INC.**, a New York corporation having an address of 2201 Dwyer Avenue, Utica, New York 13501 (the "Company") and **ECR INTERNATIONAL, INC.**, a New York corporation having an address of 2201 Dwyer Avenue, Utica, New York 13501 (the "Sublessee"), and **ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, an industrial development agency and a public benefit corporation of the State of New York having its principal office at 584 Phoenix Drive, Rome, New York 13441 (the "Agency").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such industrial development agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, the Company leases to the Agency a 25± acre parcel of land located at 2201 Dwyer Avenue, City of Utica (the "Land") and a 202,000± square foot building situated on the Land (the "Improvements") pursuant to the terms of a Lease Agreement dated as of July 1, 2009 (the "Lease Agreement"); and

WHEREAS, the Agency leases the Land and Improvements back to the Company pursuant to the terms of a Leaseback Agreement dated as of July 1, 2009 (the "Leaseback Agreement"); and

WHEREAS, the Company further subleases the Land and the Improvements to ECR International, Inc. (the "Sublessee") for its operation pursuant to a sublease agreement dated as of July 1, 2009 (the "Sublease Agreement"); and

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WHEREAS, the Sublessee has requested that the Agency undertake a project (the "Project") consisting of the following: (A) acquisition and installation of equipment in the Improvements (the "Equipment") and renovation of the Improvements, all for the purpose of manufacturing heating products for distribution to the residential and light commercial markets (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the renovation and equipping of the Improvements is referred to as the "Project"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including potential exemptions from sales tax and reduction of real property tax (collectively, the "Financial Assistance"); and (C) the extension of the lease to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in order to provide such Financial Assistance to the Company and the Sublessee under the Act, the Agency requires, among other things, that the Company, the Sublessee and the Agency enter into certain lease/leaseback transactions and other associated agreements, including that certain First Amended and Restated Lease Agreement from the Company to the Agency (the "First Amended and Restated Lease Agreement") dated of even date herewith; the First Amended and Restated Leaseback Agreement from the Agency to the Company (the "First Amended and Restated Leaseback Agreement") dated of even date herewith; the First Amended and Restated Payment-in-Lieu-of-Tax Agreement between the Agency and the Company dated of even date herewith (the "First Amended and Restated PILOT Agreement") and the First Amended and Restated Environmental Compliance and Indemnification Agreement among the Agency, the Company and the Sublessee dated of even date herewith (together with this Agreement, collectively, the "Transaction Documents"), and

WHEREAS, the Agency has appointed the Sublessee and its agents and designees as its agent for the purposes of renovating and equipping the Facility; and

WHEREAS, pursuant to the First Amended and Restated Lease Agreement, the Company has agreed to lease the Facility to the Agency for the Lease Term (defined below); and

WHEREAS, pursuant to the First Amended and Restated Leaseback Agreement, the Agency is leasing the Facility back to the Company for an extended period commencing June 1, 2020 and ending April 30, 2031 (the "Lease Term"); and

WHEREAS, pursuant to a First Amendment to Sublease Agreement dated as of June 1, 2020 (the "First Sublease Amendment"), the Company is extending the sublease of the Facility to the Sublessee for its operation; and

WHEREAS, pursuant to the Sublease Agreement as amended by the First Sublease Amendment, the Sublessee agrees to assume all of the rights and obligations of the Company under the Transaction Documents; and

WHEREAS, the Agency wishes to condition the Financial Assistance upon the Company creating and retaining, or causing the Sublessee to create and retain, certain employment at the Facility.

NOW THEREFORE, for good and valuable consideration and in consideration of the Company entering into the First Amended and Restated Lease Agreement and the First

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Amended and Restated Leaseback Agreement, the parties hereby covenant and agree as follows:

1. Definitions.

- “Agency” shall mean the Oneida County Industrial Development Agency.
- “AER” shall mean the annual compliance report the Company is required to provide to the Agency.
- “Benefit” shall mean the amount the Company saved by making payments in lieu of real property taxes in a particular year. For example, if a Company’s PILOT payment is equal to 75% of normal real property taxes, then the Company’s Benefit for that year would be an amount equal to 25% of normal real property taxes.
- “Company” shall mean ECR Properties, Inc., and its successors and/or assigns.
- “Cure Period” shall mean the period ending June 30th of the year following the Shortfall or Major Shortfall.
- “Employment Obligation Term” shall mean the period during which the Company is receiving a benefit in the form of lower payment in lieu of taxes than its real estate taxes would be.
- “Employment Obligation” shall mean the obligation of the Company to create (or cause the Sublessee to create) 3 FTEs at the Facility by the end of the third year of the First Amended and Restated Leaseback Agreement and to retain (or cause the Sublessee to retain) the existing 152 FTEs at the Facility and maintain (or cause the Sublessee to maintain) all for the duration of the Lease Term as a result of undertaking the Facility.
- “FTE” shall mean a full time employee that has a minimum of thirty-five (35) scheduled hours per week, or any combination of two or more part-time employees that work a minimum of fifteen (15) scheduled hours per week, when combined together, constitute the equivalent of a minimum of thirty-five (35) scheduled hours per week, and whose workplace location is the project facility. For this purpose an employee shall include a leased employee regularly retained by the Company, the Sublessee, or their respective agents.
- “Initial Benefit” means the amount of savings the Company or the Sublessee received through the Agency, in the form of exemptions from sales tax.

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“Major Shortfall”	means any number of FTEs that is less than 50% of the Employment Obligation.
“Minimum Standard”	shall mean an AER that shows the Company and/or the Sublessee is short of meeting its Employment Obligation by 20%.
“Per Employee Amount”	shall mean an amount equal to the Benefit for the year after the year of the Shortfall divided by the Employment Obligation.
“Shortfall”	shall mean the difference between the Employment Obligation and the actual number of FTEs per the AER for the applicable year.
“Sublessee”	shall mean ECR International, Inc., and its successors and assigns.

2. Representations and Covenants. The Company and the Sublessee make the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) Each has power to enter into and to execute and deliver this Agreement.
- (b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company or the Sublessee is a party or by which either is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company or the Sublessee under the terms of any such instrument or agreement.
- (c) The providing of the Facility by the Agency, the leasing thereof by the Agency to the Company and the subleasing thereof to the Sublessee will not result in the abandonment of an industrial facility in the State of New York, and is reasonably necessary to preserve the competitive position of the Sublessee in its industry.
- (d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company and the Sublessee shall each defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company or the Sublessee to comply with the provisions of this subsection (d).
- (e) There is no litigation pending or, to the knowledge of the Company and the Sublessee, threatened, in any court, either state or federal, to which the Company or the Sublessee is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company or the Sublessee to fulfill their respective obligations under this Agreement.

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3. Job Creation and Retention Obligations. The Company's Employment Obligation shall mean the obligation of the Company to create (or cause the Sublessee to create) 3 FTEs at the Facility by the end of the third year of the First Amended and Restated Leaseback Agreement and to retain (or cause the Sublessee to retain) the existing 152 FTEs at the Facility and maintain (or cause the Sublessee to maintain) all for the duration of the Lease Term as a result of undertaking the Facility, which is the number of FTEs employed by the Company and/or the Sublessee in Oneida County and selected by the Agency as the Company's obligation. After the expiration of the Employment Obligation Term, the Company and the Sublessee shall have no further obligation with respect to the Employment Obligation and shall not be liable for any of the payments described below.

4. Events of Default. An Event of Default shall mean either of the following events:

(a) The failure of the Company and/or the Sublessee to meet the Employment Obligation shall constitute a default under this Agreement and shall subject the Company to the applicable remedies of the Agency set forth below. The Company shall be deemed to have failed to satisfy its Employment Obligation if, at such time the Company files its AER, the total number of FTEs shown on such AER for the applicable Lease Year is below the Minimum Standard. The AER shall be filed by the Company to the Agency on or before January 31 of each calendar year during the Employment Obligation Term; provided, however, the Company is not obligated to file its first AER with the Agency sooner than January 31, 2021.

(b) If the Company shall exercise its option to terminate early the First Amended and Restated Leaseback Agreement as set forth in Section 8.1 of the First Amended and Restated Leaseback Agreement it shall constitute a default under this Agreement and shall subject the Company to the applicable remedies of the Agency set forth below.

5. Remedies.

(a) If the Company falls below the Minimum Standard, the Agency will notify the Company in writing of the Agency's intention to recapture Financial Assistance. The Company will have thirty (30) days to respond to the letter and may include a request to appear before the Agency. The Agency will determine, in its sole discretion, if a valid exemption exists and potentially reduce the remedies described below.

(b) Initial Shortfall and Shortfall Payments.

(1) If, during the first five (5) years of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall and then multiplied by (c) 1.5.

(2) If, after the first five (5) years of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall.

(3) Notwithstanding any of the foregoing, the Company shall not be liable for paying a Shortfall Payment unless the number of FTEs remains a Shortfall after the expiration of a Cure Period.

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(4) Notwithstanding any of the foregoing, a Shortfall shall not apply where the Shortfall is as a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Shortfall Payment.

(c) Major Shortfall Payment.

(1) If a Company shall incur a Major Shortfall, then the Company shall pay to the Agency as an additional one-time payment an amount as set forth in the schedule below.

<u>Major Shortfall Occurs:</u>	<u>Percentage of Initial Benefit</u>
Year 1	100%
Year 2	90%
Year 3	80%
Year 4	70%
Year 5	60%
Year 6	50%
Year 7	45%
Year 8	40%
Year 9	35%
Year 10	30%

(2) Notwithstanding any of the foregoing, the Company shall not be liable for a Major Shortfall Payment unless the number of FTEs remains at less than 65% of the Employment Obligation at the expiration of a Cure Period. The Company shall have the opportunity at any time before the expiration of a Cure Period to provide additional information to the Agency regarding the Major Shortfall, and to request a waiver or amendment of this provision.

(3) Notwithstanding any of the foregoing, a Major Shortfall shall not apply where the Shortfall is as a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Major Shortfall Payment.

(4) Qualification for a waiver of either (2) or (3) above shall be at the sole discretion of the Agency.

(d) If the Shortfall or Major Shortfall is as a result of the Company and/or the Sublessee shifting employment away from Oneida County, then the Agency will require the value of the Benefit and the Initial Benefit utilized to date to be repaid, with interest (determined as the New York State legal interest rate).

(e) If the Agency recaptures Initial Benefits or Benefits from a Company, the Agency shall return the recaptured funds promptly to the affected taxing jurisdiction, unless otherwise agreed to by the taxing jurisdiction, in accordance with the General Municipal Law.

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6. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions. Notwithstanding this right, the Agency is obligated to recapture New York State sales tax benefits where:

- a) The Project is not entitled to receive those benefits;
- b) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services; or
- c) Either the Company or the Sublessee fails to use property or services in the manner required by the Leaseback Agreement.

The Company acknowledges that the value of the sales tax exemption authorized by the Agency is currently limited to \$245,727.00.

7. Notices. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC
501 Main Street
Utica, New York 13501
Attn.: Linda E. Romano, Esq.

To the Company: ECR Properties, Inc.
2201 Dwyer Avenue
Utica, New York 13501
Attn.: Paul Totaro, Vice President/CFO

With a Copy To: Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, New York 14203-2887
Attn.: David Murray, Esq.

To the Sublessee: ECR International, Inc.
2201 Dwyer Avenue
Utica, New York 13501
Attn.: Paul Totaro, Vice President/CFO

With a Copy To: Phillips Lytle LLP
One Canalside

CONFIDENTIAL

125 Main Street
Buffalo, New York 14203-2887
Attn.: David Murray, Esq.

8. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and the Sublessee and their respective successors and assigns.

9. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

10. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

11. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

12. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State of New York.

13. Survival of Obligations. This Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 of the First Amended and Restated Leaseback Agreement and all indemnities shall survive any termination or expiration of the First Amended and Restated Leaseback Agreement as to matters occurring during the period of the Company's occupancy of the Facility.

14. Section Headings Not Controlling. The headings of the several sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.

15. Merger of the Agency.

(a) Nothing contained in this Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other body corporate and politic and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company and the Sublessee. The Agency shall promptly furnish to the Company and the Sublessee such additional information with respect to any such consolidation, merger or assignment as the Company or the Sublessee reasonably may request.

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16. No Assignment. This Agreement may not be assigned by the Company or the Sublessee except with the written consent of the Agency, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no consent from the Agency shall be required if an assignment of this Agreement is made by the Company or the Sublessee to the its respective parent, any direct or indirect subsidiary or affiliate of the Company or the Sublessee, or a successor to the Company or the Sublessee by way of merger, consolidation, corporate reorganization, or the purchase of all or substantially all of the Company's or Sublessee's assets.

17. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company or the Sublessee should default under any of the provisions of this Agreement beyond applicable notice and cure periods and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company or the Sublessee herein contained, the Company and/or the Sublessee shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

18. No Additional Waiver Implied By One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

19. Inducement Agreement. The Transaction Documents represent the entire agreements of the Agency and the Company and supersede the terms of the Inducement Agreement dated April 24, 2020 between the same parties.

[signature page follows]

CONFIDENTIAL

IN WITNESS WHEREOF, the Agency, the Company and the Sublessee have executed and delivered this **Job Creation and Recapture Agreement** as of the day and year first above written.

ECR PROPERTIES, INC.

By: _____
Paul Totaro
Vice President

ECR INTERNATIONAL, INC.

By: _____
Paul Totaro
Vice President

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
David C. Grow
Chairman

Anthony J. Picente Jr.
County Executive

Shawna M. Papale
Secretary/Executive Director

Timothy Fitzgerald
Assistant Secretary

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

OCIDA



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David C. Grow
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TO: OCIDA Board of Directors

FROM: Mark Kaucher

DATE: June 12, 2023

RE: December 31, 2022 Annual Report Job Shortfall Review

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ECR international

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2201 Dwyer Avenue
Utica, NY 13501
www.ecrinternational.com

Oneida County IDA
Ms. Shawna Papale
584 Phoenix Drive
Rome, NY 13441

RE: ECR Job Shortfall

Dear Shawna,

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Please don't hesitate to contact me if you need anything further.

Sincerely,

Debbie Dam
Executive Director of Administration
debbie.dam@ecrinternational.com
315-731-4137

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Transcript Document No. 6

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WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York (the "State"); and

WHEREAS, the Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such industrial development agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, the Company leases to the Agency a 25± acre parcel of land located at 2201 Dwyer Avenue, City of Utica (the "Land") and a 202,000± square foot building situated on the Land (the "Improvements") pursuant to the terms of a Lease Agreement dated as of July 1, 2009 (the "Lease Agreement"); and

WHEREAS, the Agency leases the Land and Improvements back to the Company pursuant to the terms of a Leaseback Agreement dated as of July 1, 2009 (the "Leaseback Agreement"); and

WHEREAS, the Company further subleases the Land and the Improvements to ECR International, Inc. (the "Sublessee") for its operation pursuant to a sublease agreement dated as of July 1, 2009 (the "Sublease Agreement"); and

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WHEREAS, the Sublessee has requested that the Agency undertake a project (the "Project") consisting of the following: (A) acquisition and installation of equipment in the Improvements (the "Equipment") and renovation of the Improvements, all for the purpose of manufacturing heating products for distribution to the residential and light commercial markets (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the renovation and equipping of the Improvements is referred to as the "Project"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing, including potential exemptions from sales tax and reduction of real property tax (collectively, the "Financial Assistance"); and (C) the extension of the lease to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in order to provide such Financial Assistance to the Company and the Sublessee under the Act, the Agency requires, among other things, that the Company, the Sublessee and the Agency enter into certain lease/leaseback transactions and other associated agreements, including that certain First Amended and Restated Lease Agreement from the Company to the Agency (the "First Amended and Restated Lease Agreement") dated of even date herewith; the First Amended and Restated Leaseback Agreement from the Agency to the Company (the "First Amended and Restated Leaseback Agreement") dated of even date herewith; the First Amended and Restated Payment-in-Lieu-of-Tax Agreement between the Agency and the Company dated of even date herewith (the "First Amended and Restated PILOT Agreement") and the First Amended and Restated Environmental Compliance and Indemnification Agreement among the Agency, the Company and the Sublessee dated of even date herewith (together with this Agreement, collectively, the "Transaction Documents"), and

WHEREAS, the Agency has appointed the Sublessee and its agents and designees as its agent for the purposes of renovating and equipping the Facility; and

WHEREAS, pursuant to the First Amended and Restated Lease Agreement, the Company has agreed to lease the Facility to the Agency for the Lease Term (defined below); and

WHEREAS, pursuant to the First Amended and Restated Leaseback Agreement, the Agency is leasing the Facility back to the Company for an extended period commencing June 1, 2020 and ending April 30, 2031 (the "Lease Term"); and

WHEREAS, pursuant to a First Amendment to Sublease Agreement dated as of June 1, 2020 (the "First Sublease Amendment"), the Company is extending the sublease of the Facility to the Sublessee for its operation; and

WHEREAS, pursuant to the Sublease Agreement as amended by the First Sublease Amendment, the Sublessee agrees to assume all of the rights and obligations of the Company under the Transaction Documents; and

WHEREAS, the Agency wishes to condition the Financial Assistance upon the Company creating and retaining, or causing the Sublessee to create and retain, certain employment at the Facility.

NOW THEREFORE, for good and valuable consideration and in consideration of the Company entering into the First Amended and Restated Lease Agreement and the First

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Amended and Restated Leaseback Agreement, the parties hereby covenant and agree as follows:

1. Definitions.

- “Agency” shall mean the Oneida County Industrial Development Agency.
- “AER” shall mean the annual compliance report the Company is required to provide to the Agency.
- “Benefit” shall mean the amount the Company saved by making payments in lieu of real property taxes in a particular year. For example, if a Company’s PILOT payment is equal to 75% of normal real property taxes, then the Company’s Benefit for that year would be an amount equal to 25% of normal real property taxes.
- “Company” shall mean ECR Properties, Inc., and its successors and/or assigns.
- “Cure Period” shall mean the period ending June 30th of the year following the Shortfall or Major Shortfall.
- “Employment Obligation Term” shall mean the period during which the Company is receiving a benefit in the form of lower payment in lieu of taxes than its real estate taxes would be.
- “Employment Obligation” shall mean the obligation of the Company to create (or cause the Sublessee to create) 3 FTEs at the Facility by the end of the third year of the First Amended and Restated Leaseback Agreement and to retain (or cause the Sublessee to retain) the existing 152 FTEs at the Facility and maintain (or cause the Sublessee to maintain) all for the duration of the Lease Term as a result of undertaking the Facility.
- “FTE” shall mean a full time employee that has a minimum of thirty-five (35) scheduled hours per week, or any combination of two or more part-time employees that work a minimum of fifteen (15) scheduled hours per week, when combined together, constitute the equivalent of a minimum of thirty-five (35) scheduled hours per week, and whose workplace location is the project facility. For this purpose an employee shall include a leased employee regularly retained by the Company, the Sublessee, or their respective agents.
- “Initial Benefit” means the amount of savings the Company or the Sublessee received through the Agency, in the form of exemptions from sales tax.

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“Major Shortfall”	means any number of FTEs that is less than 50% of the Employment Obligation.
“Minimum Standard”	shall mean an AER that shows the Company and/or the Sublessee is short of meeting its Employment Obligation by 20%.
“Per Employee Amount”	shall mean an amount equal to the Benefit for the year after the year of the Shortfall divided by the Employment Obligation.
“Shortfall”	shall mean the difference between the Employment Obligation and the actual number of FTEs per the AER for the applicable year.
“Sublessee”	shall mean ECR International, Inc., and its successors and assigns.

2. Representations and Covenants. The Company and the Sublessee make the following representations and covenants as the basis for the undertakings on its part herein contained:

- (a) Each has power to enter into and to execute and deliver this Agreement.
- (b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company or the Sublessee is a party or by which either is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any lien of any nature upon any of the property of the Company or the Sublessee under the terms of any such instrument or agreement.
- (c) The providing of the Facility by the Agency, the leasing thereof by the Agency to the Company and the subleasing thereof to the Sublessee will not result in the abandonment of an industrial facility in the State of New York, and is reasonably necessary to preserve the competitive position of the Sublessee in its industry.
- (d) The operation of the Facility will conform with all applicable zoning, planning, building and environmental laws and regulations of governmental authorities having jurisdiction over the Facility, and the Company and the Sublessee shall each defend, indemnify and hold the Agency harmless from any liability or expenses resulting from any failure by the Company or the Sublessee to comply with the provisions of this subsection (d).
- (e) There is no litigation pending or, to the knowledge of the Company and the Sublessee, threatened, in any court, either state or federal, to which the Company or the Sublessee is a party, and in which an adverse result would in any way diminish or adversely impact on the ability of the Company or the Sublessee to fulfill their respective obligations under this Agreement.

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3. Job Creation and Retention Obligations. The Company's Employment Obligation shall mean the obligation of the Company to create (or cause the Sublessee to create) 3 FTEs at the Facility by the end of the third year of the First Amended and Restated Leaseback Agreement and to retain (or cause the Sublessee to retain) the existing 152 FTEs at the Facility and maintain (or cause the Sublessee to maintain) all for the duration of the Lease Term as a result of undertaking the Facility, which is the number of FTEs employed by the Company and/or the Sublessee in Oneida County and selected by the Agency as the Company's obligation. After the expiration of the Employment Obligation Term, the Company and the Sublessee shall have no further obligation with respect to the Employment Obligation and shall not be liable for any of the payments described below.

4. Events of Default. An Event of Default shall mean either of the following events:

(a) The failure of the Company and/or the Sublessee to meet the Employment Obligation shall constitute a default under this Agreement and shall subject the Company to the applicable remedies of the Agency set forth below. The Company shall be deemed to have failed to satisfy its Employment Obligation if, at such time the Company files its AER, the total number of FTEs shown on such AER for the applicable Lease Year is below the Minimum Standard. The AER shall be filed by the Company to the Agency on or before January 31 of each calendar year during the Employment Obligation Term; provided, however, the Company is not obligated to file its first AER with the Agency sooner than January 31, 2021.

(b) If the Company shall exercise its option to terminate early the First Amended and Restated Leaseback Agreement as set forth in Section 8.1 of the First Amended and Restated Leaseback Agreement it shall constitute a default under this Agreement and shall subject the Company to the applicable remedies of the Agency set forth below.

5. Remedies.

(a) If the Company falls below the Minimum Standard, the Agency will notify the Company in writing of the Agency's intention to recapture Financial Assistance. The Company will have thirty (30) days to respond to the letter and may include a request to appear before the Agency. The Agency will determine, in its sole discretion, if a valid exemption exists and potentially reduce the remedies described below.

(b) Initial Shortfall and Shortfall Payments.

(1) If, during the first five (5) years of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall and then multiplied by (c) 1.5.

(2) If, after the first five (5) years of the Employment Obligation Term a Company fails to achieve the Minimum Standard, then the Company shall pay to the Agency an amount equal to (a) the Per Employee Amount multiplied by (b) the Shortfall.

(3) Notwithstanding any of the foregoing, the Company shall not be liable for paying a Shortfall Payment unless the number of FTEs remains a Shortfall after the expiration of a Cure Period.

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(4) Notwithstanding any of the foregoing, a Shortfall shall not apply where the Shortfall is as a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Shortfall Payment.

(c) Major Shortfall Payment.

(1) If a Company shall incur a Major Shortfall, then the Company shall pay to the Agency as an additional one-time payment an amount as set forth in the schedule below.

<u>Major Shortfall Occurs:</u>	<u>Percentage of Initial Benefit</u>
Year 1	100%
Year 2	90%
Year 3	80%
Year 4	70%
Year 5	60%
Year 6	50%
Year 7	45%
Year 8	40%
Year 9	35%
Year 10	30%

(2) Notwithstanding any of the foregoing, the Company shall not be liable for a Major Shortfall Payment unless the number of FTEs remains at less than 65% of the Employment Obligation at the expiration of a Cure Period. The Company shall have the opportunity at any time before the expiration of a Cure Period to provide additional information to the Agency regarding the Major Shortfall, and to request a waiver or amendment of this provision.

(3) Notwithstanding any of the foregoing, a Major Shortfall shall not apply where the Shortfall is as a result of a major casualty to or condemnation of the facility. In the event of such major casualty or condemnation, the Company shall have no obligation to pay the Major Shortfall Payment.

(4) Qualification for a waiver of either (2) or (3) above shall be at the sole discretion of the Agency.

(d) If the Shortfall or Major Shortfall is as a result of the Company and/or the Sublessee shifting employment away from Oneida County, then the Agency will require the value of the Benefit and the Initial Benefit utilized to date to be repaid, with interest (determined as the New York State legal interest rate).

(e) If the Agency recaptures Initial Benefits or Benefits from a Company, the Agency shall return the recaptured funds promptly to the affected taxing jurisdiction, unless otherwise agreed to by the taxing jurisdiction, in accordance with the General Municipal Law.

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6. The Agency retains all rights to impose, delay or waive penalties and the right to deviate from these recapture provisions. Notwithstanding this right, the Agency is obligated to recapture New York State sales tax benefits where:

- a) The Project is not entitled to receive those benefits;
- b) The exemptions exceed the amount authorized, or are claimed for unauthorized property or services; or
- c) Either the Company or the Sublessee fails to use property or services in the manner required by the Leaseback Agreement.

The Company acknowledges that the value of the sales tax exemption authorized by the Agency is currently limited to \$245,727.00.

7. Notices. All notices, certificates or other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (i) mailed by United States registered or certified mail, postage prepaid, return receipt requested or (ii) when delivered by a commercial overnight courier that guarantees next day delivery and provides a receipt, to the Agency or the Company, as the case may be, addressed as follows:

To the Agency: Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441
Attn.: Chairman

With a Copy To: Bond, Schoeneck & King, PLLC
501 Main Street
Utica, New York 13501
Attn.: Linda E. Romano, Esq.

To the Company: ECR Properties, Inc.
2201 Dwyer Avenue
Utica, New York 13501
Attn.: Paul Totaro, Vice President/CFO

With a Copy To: Phillips Lytle LLP
One Canalside
125 Main Street
Buffalo, New York 14203-2887
Attn.: David Murray, Esq.

To the Sublessee: ECR International, Inc.
2201 Dwyer Avenue
Utica, New York 13501
Attn.: Paul Totaro, Vice President/CFO

With a Copy To: Phillips Lytle LLP
One Canalside

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125 Main Street
Buffalo, New York 14203-2887
Attn.: David Murray, Esq.

8. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Agency, the Company and the Sublessee and their respective successors and assigns.

9. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

10. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the parties hereto.

11. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

12. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State of New York.

13. Survival of Obligations. This Agreement shall survive the performance of the obligations of the Company to make payments required by Section 2.6 of the First Amended and Restated Leaseback Agreement and all indemnities shall survive any termination or expiration of the First Amended and Restated Leaseback Agreement as to matters occurring during the period of the Company's occupancy of the Facility.

14. Section Headings Not Controlling. The headings of the several sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.

15. Merger of the Agency.

(a) Nothing contained in this Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other body corporate and politic and public instrumentality of the State of New York or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all the agreements and conditions of this Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public instrumentality or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests hereunder shall be assigned.

(b) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company and the Sublessee. The Agency shall promptly furnish to the Company and the Sublessee such additional information with respect to any such consolidation, merger or assignment as the Company or the Sublessee reasonably may request.

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16. No Assignment. This Agreement may not be assigned by the Company or the Sublessee except with the written consent of the Agency, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, no consent from the Agency shall be required if an assignment of this Agreement is made by the Company or the Sublessee to the its respective parent, any direct or indirect subsidiary or affiliate of the Company or the Sublessee, or a successor to the Company or the Sublessee by way of merger, consolidation, corporate reorganization, or the purchase of all or substantially all of the Company's or Sublessee's assets.

17. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company or the Sublessee should default under any of the provisions of this Agreement beyond applicable notice and cure periods and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company or the Sublessee herein contained, the Company and/or the Sublessee shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred.

18. No Additional Waiver Implied By One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

19. Inducement Agreement. The Transaction Documents represent the entire agreements of the Agency and the Company and supersede the terms of the Inducement Agreement dated April 24, 2020 between the same parties.

[signature page follows]

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IN WITNESS WHEREOF, the Agency, the Company and the Sublessee have executed and delivered this **Job Creation and Recapture Agreement** as of the day and year first above written.

ECR PROPERTIES, INC.

By: _____
Paul Totaro
Vice President

ECR INTERNATIONAL, INC.

By: _____
Paul Totaro
Vice President

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
David C. Grow
Chairman