

**Final Authorizing Resolution
Cree, Inc. Facility**

Transcript Document No. 13(a)

Date: October 18, 2019

At a meeting of the Oneida County Industrial Development Agency (the "Agency") held at 584 Phoenix Drive, Rome, New York 13441 on the 18th day of October 2019, the following members of the Agency were:

Members Present: Ferris Betrus, Michael Fitzgerald, David Grow, Mary Faith Messenger, Eugene Quadraro, Steve Zogby

Excused: Kirk Hinman

EDGE Staff Present: S. DiMeo, S. Papale, M. Carney, J. Waters, M. Kaucher

Others Present: Rome Mayor Jackie Izzo; Mark Levitt & Jenna Peppenelli, Levitt & Gordon; Dave Hill, Rome Sentinel; Bill Maxim, Northeast Regional Council of Carpenters; Linda Romano and Laura Ruberto, Bond, Schoeneck & King; Bill Guglielmo, Rome Area Chamber of Commerce; WKTV Videographer

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 Cree, Inc.

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

Voting Aye

David Grow
Michael Fitzgerald
Ferris Betrus
Mary Faith Messenger
Eugene Quadraro
Steve Zogby

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, THE PILOT MORTGAGE, THE LENDERS' FINANCING DOCUMENTS AND RELATED DOCUMENTS WITH RESPECT TO THE CREE, INC. FACILITY LOCATED IN THE TOWN OF MARCY, 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, Economic Development Growth Enterprises Corporation, on behalf of itself and its principals (collectively, "EDGE"), and Cree, Inc., on behalf of itself and its principals (collectively, the "Company"), or an entity to be formed on behalf of any of the foregoing has applied to the Agency to enter into a transaction in which the Agency will assist in the (i) acquisition of an interest in a 55.25± acre parcel of land situate at Edic Road in the Town of Marcy, Oneida County, New York (the "Land"), (ii) construction on the Land of four buildings with 450,000± square feet of floor area consisting of (a) a three-story administrative building measuring 75,000± square feet; (b) a three-story, 300,000± square foot ballroom style wafer fabrication building with total cleanroom space measuring 100,000 - 135,000 square feet; (c) a HPM Warehouse, (d) a single-story Central Utilities Building measuring 70,000± square feet, and (e) all utilities and infrastructure to support the same (collectively, the "Improvements"); and (iii) acquisition and installation of furniture, fixtures and equipment in the Improvements (the "Equipment"), all for the purpose of providing a state of the art wafer fabrication plant to support the substantial growth of the Company in its target markets (the Land, the Improvements and the Equipment is referred to collectively as the "Facility" and the construction, renovation and equipping of the Improvements is referred to as the "Project"); and

WHEREAS, The People of the State of New York, acting by and through the State University of New York (the "State") owns in fee a 53.76± acre portion of the Land (the "State Land") and leases the State Land to Fort Schuyler Management Corporation ("FSMC") pursuant to an Amended and Restated Ground Lease dated as of May 1, 2010, as may have been or may be amended from time to time (the "First Ground Lease"); and

WHEREAS, FSMC will ground sublease the State Land to EDGE pursuant to a Second Ground Sublease, as may be amended from time to time (the "Second Ground Lease"); and

WHEREAS, EDGE owns in fee a 1.49± acre portion of the Land (the "EDGE Land"); and

WHEREAS, EDGE will lease and/or sub-sublease the Facility to the Company pursuant to a Ground Sublease, as may be amended from time to time (the "Third Ground Lease"); and

WHEREAS, the Agency will acquire a leasehold interest in the Facility pursuant to a Lease Agreement from the Company to the Agency (the "Lease Agreement") and lease the

Facility back to the Company pursuant to a Leaseback Agreement from the Agency to the Company (the "Leaseback Agreement"); and

WHEREAS, the Agency by resolution duly adopted on September 27, 2019 (the "Inducement Resolution") 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, the Agency conducted a public hearing on October 15, 2019 and has received all comments submitted with respect to the Financial Assistance and the nature and location of the Facility; and

WHEREAS, the Agency contemplates that it will provide financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales and use taxes on materials and/or the Equipment used or incorporated in the Facility; and

WHEREAS, the Agency contemplates that it will make provision for payments-in-lieu-of-taxes (the "PILOT Payments") by the Company to the Agency pursuant to a Payment-In-Lieu-of-Tax Agreement (the "PILOT Agreement"), which PILOT Payments are to be allocated by the Agency in accordance with the terms of an Agreement Approving PILOT Terms and Allocating PILOT Payments dated as of October 1, 2013 by and among the County of Oneida, Whitesboro Central School District, the Town of Marcy, Maynard Fire District, Dunham Public Library (each an "Affected Tax Jurisdiction" and collectively, the "Affected Tax Jurisdictions"), the Agency and EDGE (the "Allocation Agreement"); and

WHEREAS, in accordance with the Allocation Agreement and based upon existing projections, the Company shall pay approximately \$74,879,362.88 in PILOT Payments over 49 years (which figure may be updated from time to time); and

WHEREAS, the payments under the PILOT Agreement will be a first-priority lien on the Facility, secured by a PILOT Mortgage from the Agency and the Company to the Agency, for the benefit of the Taxing Authorities (the "PILOT Mortgage"); and

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

- i. Sales and use tax exemption estimated at \$22,000,000.00 but not to exceed \$36,093,750.00; and
- ii. Mortgage recording tax exemptions estimated at \$115,000.00 but not to exceed \$126,500.000.

WHEREAS, the Company represented that it will create the following full time equivalent ("FTE") positions at the Facility, as a result of undertaking the Facility (the "Employment Obligation"):

Year 1	37
Year 2	270
Year 3	321
Year 4	350
Year 5	414

Year 6	488
Year 7	564
Year 8	614
Year 9	614
Year 10	614

WHEREAS, the Financial Assistance is conditioned upon the Company achieving the Employment Obligation for a period of ten (10) years following completion of the Facility, and failure to do so may result in the termination or recapture of Financial Assistance; and

WHEREAS, the Financial Assistance is a deviation from Agency's Uniform Tax Exemption Policy (the "Policy") and by letter dated October 11, 2019 the Agency provided written notice to the Affected Tax Jurisdictions describing the Financial Assistance and the reasons it is deviating from the Policy; and

WHEREAS, EDGE has agreed to finance a portion of the costs of the Facility by undertaking certain site work in furtherance of the Project (the "EDGE Project Related Debt"); and

WHEREAS, NBT Bank, National Association (the "Bank"), together with a consortium of other lenders to be identified at a later date (collectively, the "EDGE Lenders," and together with the Bank, collectively, the "Lenders") have agreed to finance the EDGE Project Related Debt by extending one or more loans to EDGE in the principal sum of up to \$9,250,000.00, to be secured by one or more mortgages and/or other documents deemed necessary by the Lenders to secure their respective interests (the "Lenders' Financing Documents"); 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.

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 acquisition, 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 acquisition, construction, equipping and financing 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 27, 2019 encompassed the actions to be undertaken by this resolution and no changes have been made 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 is an effective instrument whereby the Company grants the Agency a leasehold interest in the Facility; and

(i) The Leaseback Agreement is an effective instrument whereby the Agency leases the Facility back to the Company; and

(j) The PILOT Agreement, 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 Job Creation 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 achieving the Employment Obligation; and

(m) The PILOT Mortgage will be an effective instrument whereby the Company and the Agency mortgage the Facility to the Agency, for the benefit of the taxing jurisdictions, to secure payments under the PILOT Agreement as a first-priority lien; and

(n) The Lenders' Financing Documents, in the Agency's customary forms and subject to review by counsel, will be effective instruments whereby the Agency grants to the Lenders a security interest in the Facility.

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 and deliver the Environmental Compliance and Indemnification Agreement, (vii) execute, deliver and perform the Recapture Agreement, (viii) execute, deliver and perform the PILOT Mortgage; (ix) execute, deliver and

perform the Lenders Financing Documents, and (x) deviate from the Policy and provide the Financial Assistance to the Company in support of the Project.

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, the PILOT Agreement and the PILOT Mortgage (each in substantially the forms presented to the Agency and which, prior to the execution and delivery thereof, may be redated) are hereby approved. The form and substance of the Lenders' Financing Documents are hereby approved, subject to the inclusion of the Agency's standard financing provisions and subject to counsel review.

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 Recapture Agreement, the PILOT Agreement and the PILOT Mortgage, 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, inclusive of the Lenders' Financing Documents (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 the 18th day of October 2019 with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

That the Lease Agreement, the Leaseback Agreement, the Environmental Compliance and Indemnification Agreement, the Recapture Agreement, the PILOT Agreement and the PILOT Mortgage contained in this transcript of proceedings are each in substantially the form presented to the Agency and/or approved by said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand as of this 22nd day of May 2020.

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Shawria M. Papale, Secretary