

COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY

548 Broadway
Monticello, New York 12701
(845) 428-7575 - Voice
(845) 428-7577 - Fax
www.sullivanida.com
TTY 711

SPECIAL MEETING NOTICE

TO: Ira Steingart, IDA Chairman
Suzanne Loughlin, IDA Vice Chair
Howard Siegel, IDA Treasurer & Chief Financial Officer
Edward Sykes, IDA Assistant Secretary & Chief Executive Officer
Scott Smith, IDA Assistant Treasurer
Paul Guenther, IDA Member
Joseph Perrello, IDA Member
Carol Roig, IDA Member
Chairman and Members of the Sullivan County Legislature
Josh Potosek, Sullivan County Manager
Walter Garigliano, Esq., IDA Counsel

FROM: Jennifer Flad, Executive Director

DATE: July 21, 2020

PLEASE TAKE NOTICE that there will be a Special Meeting of the County of Sullivan Industrial Development Agency scheduled as follows:

Date: Friday, July 31st, 2020
Time: 6:00 PM
Location: Via Conference Call

Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 220.1 issued on March 12, 2020 suspending the Open Meetings Law, extended by Executive Order No. 202.48 issued on July 6, 2020, this meeting will be held via conference call instead of a public meeting open for the public to attend in person.

Members of the public may attend the meeting by dialing 929-205-6099 and entering Meeting ID 996-4626-3126.

SEE REVERSE FOR AGENDA

COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY

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AMENDED SPECIAL MEETING AGENDA

Friday, July 31, 2020 at 6:00 PM

To be held via conference call: Dial 929-205-6099 and enter Meeting ID 996-4626-3126

I. CALL TO ORDER

II. ROLL CALL

III. OLD BUSINESS

Resolution: Consenting to the Assignment by Canopy Liberty LLC of All Right, Title and Interest in and to the Project Located at 1695 Route 52, Town of Liberty, County of Sullivan, State of New York to MHC 83 (HW Portfolio), LLC

Resolution: To Consider Amendment of the Community Distributed Generation Uniform Tax Exemption Policy

Discussion: Catskill Distilling Co. Ltd. Chapter 11 Bankruptcy (in Executive Session)
Any and All Other Business before the Board

IV. ADJOURN

##

Cole Schotz P.C.

John S. Stewart
Member
Admitted in NJ and NY

Reply to New Jersey Office
Writer's Direct Line: 201.525.6336
Writer's Direct Fax: 201.678.6336
Writer's E-Mail: JStewart@coleschotz.com

Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, NJ 07602-0800
201-489-3000 201-489-1536 fax
—
New York
—
Delaware
—
Maryland
—
Texas
—
Florida

June 29, 2020

Via E-mail

Jflad@sullivanida.com and JulioG@sullivanida.com

Chief Executive Officer
County of Sullivan Industrial Development
Agency, Inc.
548 Broadway
Monticello, New York 12710
Attn: Ms. Jennifer M. Flad, Executive Director

Re: Canopy Liberty LLC (“Owner”), proposed assignment to MHC 83 (HW Portfolio), LLC (“MHC”) of Second Amended and Restated Lease Agreement (the “Lease”) and Second Amended and Restated Payment in Lieu of Tax Agreement (the “PILOT Agreement”) with the County of Sullivan Industrial Development Agency, Inc. (the “IDA”) for property located at 1695 Route 52, Liberty, NY (Section 30, Block 1, Lot 90.7) (the “Property”)

Dear Ms. Flad:

As discussed with Thomas Vogel of this office, we represent Owner in connection with a proposed sale of the Property to MHC and in connection therewith a proposed assignment of the Lease and the PILOT Agreement. Pursuant to Sections 6.3 and 9.1 of the Lease and Section 21 of the PILOT Agreement, Owner here by requests the written consent of the IDA to any assignment of the Lease and the PILOT Agreement to MHC in connection with the sale of the Property.

Please also confirm that the receipt of this notice via e-mail will satisfy the requirements of the notice provisions of Section 9.1 of the Lease and Section 21 of the PILOT Agreement or whether you will in fact require a hard copy of this notice to be forwarded.

We look forward to hearing from you regarding the above matter.

Sincerely,
/s/ *John S. Stewart*

JSS:tv

cc: Walter F. Garigiano, Esq. (Walter@garigianolaw.com)

RESOLUTION

A special meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened via teleconference on July 31, 2020, at 6:00 p.m.

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

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[]	[]
Suzanne Loughlin	[]	[]
Edward T. Sykes	[]	[]
Howard Siegel	[]	[]
Scott Smith	[]	[]
Paul Guenther	[]	[]
Joseph Perrello	[]	[]
Carol Roig	[]	[]

The following persons were also present:

Jennifer M. Flad, Executive Director
Julio Garaicoechea, Project Manager
Deborah Nola, Accounting and Financial Analyst
Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by _____, and seconded by _____, to wit:

Resolution No. __ - 20

RESOLUTION OF THE AGENCY (I) CONSENTING TO THE ASSIGNMENT BY CANOPY LIBERTY LLC (“CANOPY”) OF ALL RIGHT, TITLE AND INTEREST IN AND TO THE PROJECT LOCATED AT 1695 ROUTE 52, LIBERTY, TOWN OF LIBERTY, COUNTY OF SULLIVAN, STATE OF NEW YORK TO MHC 83 (HW PORTFOLIO) LLC (“MHC 83”); AND (II) AUTHORIZING THE AGENCY TO EXECUTE A GAP MORTGAGE AND A CONSOLIDATED, AMENDED AND RESTATED FEE AND LEASEHOLD MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (AND RELATED FINANCING DOCUMENTS) IN FAVOR OF CITIBANK, N.A. (“BANK”) IN AN AMOUNT NOT TO EXCEED SEVENTEEN MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 (\$17,250,000.00) DOLLARS

WHEREAS, the Agency was created by Chapter 560 of the Laws of 1970 of the State of New York, as amended, pursuant to Title I of Article 18-A of the General Municipal Law of the

State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York ("State"); and

WHEREAS, on or about June 16, 2003, Liberty Storage, L.L.C. ("Liberty Storage") and the Agency closed on a straight lease transaction relating to the multi-phase development of self-storage units (the "Project") on premises located at 1695 Route 52 in the Town of Liberty, County of Sullivan, State of New York consisting of approximately 9.36± acres of land and identified on the Town of Liberty tax map as Section 30, Block 1, Lot 90.7 ("Land") and in furtherance thereof entered into various agreements including but not limited to a Lease Agreement and a Payment in Lieu of Tax Agreement ("2003 Transaction Documents"); and

WHEREAS, on or about June 16, 2003, Liberty Storage and the Agency entered into an Agent Agreement pursuant to which the Agency appointed Liberty Storage as its Agent to construct the first phase of the project ("2003 Agent Agreement"); and

WHEREAS, on or about September 1, 2004, Liberty Storage applied to the Agency and the Agency approved the construction of additional improvements on the Land and in furtherance thereof entered into various agreements including, but not limited to, an Amended and Restated Agent Agreement, an Amended and Restated Lease Agreement and an Amended and Restated Payment in Lieu of Tax Agreement ("2004 Transaction Documents"); and

WHEREAS, Liberty Storage transferred, assigned and conveyed to Canopy the Project and all of its right, title and interest in and to the Liberty Storage Project Documents, and Canopy, subject to the terms and conditions of the Liberty Storage Project Documents, accepted and purchased all of Liberty Storage's right, title and interest in and to the Project and the Liberty Storage Project Documents; and

WHEREAS, on or about October __, 2014, the Agency and Canopy entered into an Agent Agreement pursuant to which the Agency appointed Canopy as its Agent for the purpose of constructing and equipping an addition to the storage facility (the "2014 Project"); and

WHEREAS, on or about November 3, 2014, the Agency and Canopy closed on a straight lease transaction and in furtherance thereof entered into various agreements including, but not limited to, a Second Amended and Restated Lease Agreement and a Second Amended and Restated Payment in Lieu of Tax Agreement ("2014 Agency Documents" and together with the 2003 Transaction Documents and the 2004 Transaction Documents, the "Liberty Storage Project Documents"); and

WHEREAS, Canopy desires to transfer, assign and convey all of its right, title and interest in and to the Project and all of its rights under the Liberty Storage Project Documents to MHC 83, and MHC 83, subject to the terms and conditions of the Liberty Storage Project Documents, desires to accept and purchase all of Canopy's right, title and interest in and to the Project and all of its rights under the Liberty Storage Project Documents; and

WHEREAS, pursuant to Section 6.3 of the Second Amended and Restated Lease Agreement by and between the Agency and Canopy, MHC 83 by its letter dated July 3, 2020 has requested the Agency's consent to such assignment; and

WHEREAS, the Bank intends to make a loan to MHC 83 in an amount not to exceed Seventeen Million Two Hundred Fifty Thousand and 00/100 (\$17,250,000.00) DOLLARS, which loan will be secured by the Mortgages (as defined below) on the Project and the Land; and

WHEREAS, MHC 83 has requested that the Agency join in the execution of a GAP Mortgage and a Consolidated, Amended and Restated Fee and Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (“Mortgages”), together with any and all related financing documents which shall not exceed Seventeen Million Two Hundred Fifty Thousand and 00/100 (\$17,250,000.00) DOLLARS in favor of the Bank; and

WHEREAS, it is contemplated that the Agency will join in the execution of the Mortgages, together with any and all related financing documents which shall secure an amount not to exceed Seventeen Million Two Hundred Fifty Thousand and 00/100 (\$17,250,000.00) DOLLARS in favor of the Bank.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Agency hereby consents to the assignment of all of Canopy’s right, title and interest in and to the Project and all of its right under the Liberty Storage Project Documents to MHC 83 or one or more entities to be formed by them, conditioned upon (i) MHC 83 entering into an Omnibus Amendment (the “Omnibus Amendment”) of the Liberty Storage Project Documents so as to establish a direct contractual relationship with the Agency; (ii) payment by MHC 83 to the Agency of a consent fee in the amount of FIVE THOUSAND and 00/100 (\$5,000.00) DOLLARS; and (iii) payment of any and all costs or fees incurred by the Agency in furtherance of these resolutions.

Section 2. The Chairman, Executive Director or Chief Executive Officer of the Agency, each acting individually, are each hereby authorized, on behalf of the Agency, to execute and deliver the Mortgages (together with any and all related financing documents) in favor of the Bank to secure an amount not to exceed Seventeen Million Two Hundred Fifty Thousand and 00/100 (\$17,250,000.00) DOLLARS; provided, however, that mortgage tax shall not be abated on the GAP Mortgage, all in form approved by Counsel to the Agency and with such changes, variations, omissions and insertions as the Executive Director or Chief Executive Officer of the Agency shall approve, the execution thereof by the Executive Director or Chief Executive Officer of the Agency to constitute conclusive evidence of such approval.

Section 3. The Chairman, Executive Director or Chief Executive Officer of the Agency, each acting individually, are each hereby authorized, on behalf of the Agency, to execute and deliver any and all documents necessary to amend and restate the Liberty Storage Project Documents and effectuate the establishment of a direct contractual relationship with the Agency, including, without limitation, the Omnibus Amendment.

Section 4. 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 and to execute and deliver all such certificates, instruments, documents, and to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or in the opinion of the officer, employee or agent acting on behalf of the Agency desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all the terms, covenants and provisions of the documents for and on behalf of the Agency.

Section 5. These resolutions shall take effect immediately.

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

Ira Steingart	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Suzanne Loughlin	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Edward T. Sykes	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Howard Siegel	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Scott Smith	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Joseph Perrello	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Carol Roig	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain

The resolutions were thereupon duly adopted.

STATE OF NEW YORK :
:SS.:
COUNTY OF SULLIVAN :

I, the undersigned (Assistant) Secretary of the County of Sullivan Industrial Development Agency DO HEREBY CERTIFY THAT:

- I have compared the foregoing copy of a resolution of the County of Sullivan Industrial Development Agency (“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 via teleconference on the 31st day of July, 2020 at 6:00 p.m. at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[]	[]
Suzanne Loughlin	[]	[]
Edward T. Sykes	[]	[]
Howard Siegel	[]	[]
Scott Smith	[]	[]
Paul Guenther	[]	[]
Joseph Perrello	[]	[]
Carol Roig	[]	[]

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

Ira Steingart	[] Yes	[] No	[] Absent	[] Abstain
Suzanne Loughlin	[] Yes	[] No	[] Absent	[] Abstain
Edward T. Sykes	[] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[] Yes	[] No	[] Absent	[] Abstain
Scott Smith	[] Yes	[] No	[] Absent	[] Abstain
Paul Guenther	[] Yes	[] No	[] Absent	[] Abstain
Joseph Perrello	[] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[] Yes	[] No	[] Absent	[] Abstain

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) 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 103a and 104, (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 and seal on the 31st day of July, 2020.

Secretary

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened via teleconference on July 31, 2020, at 6:00 p.m.

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

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[]	[]
Suzanne Loughlin	[]	[]
Edward T. Sykes	[]	[]
Howard Siegel	[]	[]
Scott Smith	[]	[]
Paul Guenther	[]	[]
Joseph Perrello	[]	[]
Carol Roig	[]	[]

The following persons were also present:

Jennifer M. Flad, Executive Director
Julio Garaicoechea, Project Manager
Deborah Nola, Accounting and Financial Analyst
Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by Carol Roig, and seconded by _____, to wit:

Resolution No. __ - 20

***RESOLUTION TO CONSIDER AMENDMENT OF THE COMMUNITY
DISTRIBUTED GENERATION UNIFORM TAX EXEMPTION POLICY***

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York ("State"), as amended, and Chapter 560 of the Laws of 1970 of the State, as amended and codified as Section 960 of the General Municipal Law (collectively, the “Act”), the Agency was created with the authority and power to own, lease and sell property as authorized by the Act; and

WHEREAS, on December 12, 2016, the Agency adopted the Community Distributed Generation Uniform Tax Exemption Policy (“Solar UTEP”); and

WHEREAS, the Solar UTEP contemplated a project pay the greater of a fixed PILOT amount or a variable formula amount based on the project’s revenue; and

WHEREAS, changes in the New York State Energy and Research Development Authority (“NYSERDA”) programs providing financial incentives to Community Solar developers have materially changed, making the variable formula-based computation potentially unfair and difficult to compute.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Agency consider the amendment of the Solar UTEP (1) to allow for the fixed PILOT payment obligation to be modified as project economics are impacted by the changing NYSERDA regulatory scheme and incentive structure and (ii) to eliminate the variable formula-based alternate PILOT Payment calculation method.

Section 2. The Executive Director of the Agency is hereby directed to (i) prepare a summary outlining the proposed amendment; (ii) mail the summary to the County’s taxing jurisdictions and (iii) take such other actions as are necessary for the Agency to consider the amendment of the Solar UTEP.

Section 3. This resolution shall take effect immediately.

THE MEMBERS VOTED ON THE FOREGOING RESOLUTION AS FOLLOWS:

Ira Steingart	[] Yes	[] No	[] Absent	[] Abstain
Suzanne Loughlin	[] Yes	[] No	[] Absent	[] Abstain
Edward T. Sykes	[] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[] Yes	[] No	[] Absent	[] Abstain
Scott Smith	[] Yes	[] No	[] Absent	[] Abstain
Paul Guenther	[] Yes	[] No	[] Absent	[] Abstain
Joseph Perrello	[] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[] Yes	[] No	[] Absent	[] Abstain

and therefore, the resolution was declared duly adopted.

STATE OF NEW YORK :
:SS.:
COUNTY OF SULLIVAN :

I, the undersigned Secretary (or Assistant) of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of 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.
2. Such resolution was passed at a meeting of the Agency duly convened via teleconference on July 31, 2020 at 6:00 p.m. at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Ira Steingart	[]	[]
Suzanne Loughlin	[]	[]
Edward T. Sykes	[]	[]
Howard Siegel	[]	[]
Scott Smith	[]	[]
Paul Guenther	[]	[]
Joseph Perrello	[]	[]
Carol Roig	[]	[]

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

Ira Steingart	[] Yes	[] No	[] Absent	[] Abstain
Suzanne Loughlin	[] Yes	[] No	[] Absent	[] Abstain
Edward T. Sykes	[] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[] Yes	[] No	[] Absent	[] Abstain
Scott Smith	[] Yes	[] No	[] Absent	[] Abstain
Paul Guenther	[] Yes	[] No	[] Absent	[] Abstain
Joseph Perrello	[] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[] Yes	[] No	[] Absent	[] Abstain

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) 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 103a and 104, (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 and seal on the 31st day of July, 2020.

Secretary

COUNTY OF SULLIVAN INDUSTRIAL DEVELOPMENT AGENCY

SUMMARY OF COMMUNITY DISTRIBUTED GENERATION PROJECT UNIFORM TAX EXEMPTION POLICY

Purposes of the Policy:

To support New York State's "Reforming the Energy Vision" Initiative, which is intended to encourage renewable energy development that will spur economic growth and develop new energy business models.

To bring community distributed generation projects to Sullivan County, where existing low electricity rates would otherwise inhibit investment in solar installations.

To administer a single County-wide uniform tax exempt policy, allowing municipalities to collect long-term predictable PILOT monies without the burden of developing and administering PILOT agreements at the municipal level.

To respect variations in local policy by requiring that each project application includes a letter affirming that the host municipality supports the project.

To foster the development of residential and small business on-site solar energy systems, which are not eligible for IDA benefits, by requiring that towns recommending projects to the IDA also participate in New York State's Real Property Tax Law Section 487 program.

To assist project developers by offering a single County-wide uniform tax exempt policy, eliminating the need to negotiate PILOTs with the County and the various towns, villages, and school districts.

To enhance developers' prospects for financing community distributed generation projects by offering a uniform PILOT structure that is simple and therefore more appealing to lenders.

To benefit Sullivan County residents and businesses by requiring community distributed generation projects to offer them a local buying preference and an electricity rate of 10 percent less than the utility company's default rate, averaged over a 36 month period.

To stimulate Sullivan County's transition to a sustainable energy economy by fostering the generation of local solar energy that is purchased and used within the County.

To bring short- and long-term jobs to Sullivan County.

Program Tax Abatements:

Sales: Sales tax abatement on all taxable purchases made in connection with the acquisition, construction, installation, and equipping of the project.

Mortgage: Mortgage tax abatement on all loans financing projects under this program.

Real Estate: Real estate taxes on the increased value resulting from improvements are abated over a twenty year period. The annual payment in lieu of taxes (PILOT) is the greater of \$10,000.00 per megawatt (MW) of the facility's nameplate capacity, or 6 percent of gross revenue of the project's sale of electricity. By way of example, for a typical 2 MW project that produces 3,375,000 kilowatt hours (kWh) per year at a price of 9.5 cents per kWh, gross revenue is \$320,625.00. Six percent of gross revenue equals \$19,237.50. In this instance, the PILOT payment for the year is \$20,000.00, which is divided among all affected taxing jurisdictions in proportion to their tax rates.