

RESOLUTION

A regular meeting of the County of Sullivan Industrial Development Agency (“Agency”) was convened on October 19, 2020, at 11:00 a.m., local time via teleconference as authorized by New York Governor Andrew Cuomo’s Executive Order No. 202.67.

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 Paul Guenther, and seconded by Scott Smith, to wit:

Resolution No. 47 - 20

***RESOLUTION DIRECTING THE RECAPTURE OF UNAUTHORIZED SALES AND USE TAX BENEFITS E FROM BRR BROTHERS III, LLC AND SULLIVAN COUNTY FABRICATION, INC. (“COMPANY”) PROJECT***

*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 or about January 28, 2016, the Company presented an application (“Application”) to the Agency, a copy of which is on file at the office of the Agency, requesting that the Agency consider undertaking a project consisting of the: (i) acquisition, construction, reconstruction, renovation, rehabilitation, installation and equipping of six (6) buildings

aggregating approximately 180,000± square feet intended to be used to accommodate a metal fabrication factory and storage of manufactured products (collectively, “Existing Buildings”) situate on two (2) parcels of real estate consisting of approximately 138.26± acres located along Glen Wild Road, Town of Fallsburg (“Town”), Woodridge, County of Sullivan (“County”), State and identified on the Town tax map as Section 62, Block 1, Lot 20.1 and Section 63, Block 1, Lot 4 (“Land”); (ii) acquisition, construction and equipping of the Existing Buildings; (iii) acquisition, construction and installation thereon and therein of certain furniture, fixtures, machinery, equipment and tools (“Equipment”); (iv) construction of improvements to the Existing Buildings, the Land and the Equipment (collectively, the Existing Buildings, the Land and the Equipment are referred to as the “Facility” or the “Project”); and (v) lease of the Facility from the Agency to the Company; and

*WHEREAS*, on or about April 22, 2016, the Agency and the Company closed on a lease/leaseback transaction which consisted of the Lease to Agency, Leaseback to Company, Payment in Lieu of Tax Agreement and related documents (collectively the, “Transaction Documents”); and

*WHEREAS*, on or about April 22, 2016, contemporaneously with the Transaction Documents, the Agency and Company also entered into an Agent Agreement; and

*WHEREAS*, the Company has submitted Monthly Purchase Reports to the Agency indicating the taxable purchases made without payment of sales tax, and has submitted annual ST-340 Forms to the New York State Department of Taxation and Finance, indicating the total sales and use tax exemptions claimed; and

*WHEREAS*, during a review of these documents, the Agency became aware that the total sales and use tax exemption reported on the Monthly Purchase Reports for 2019 differs from the total sales and use tax exemption reported on the ST-340 for 2019; and

*WHEREAS*, the 2019 Monthly Purchase Reports showed a total exemption in the amount of \$2,808.80, which includes purchases made without payment of sales and use tax during the period January through May 2019; and

*WHEREAS*, the sales tax exemption period had expired on April 30, 2019 therefore the May 2019 purchases were not tax-exempt; and

*WHEREAS*, the Company provided revised Monthly Purchase Reports including the period January through April 2019 and showing a total exemption in the amount of \$1,280.55; and

*WHEREAS*, the 2019 ST-340, shows total exemption of \$2,808.80, was prepared using the original Monthly Purchase Reports; and

*WHEREAS*, the Company, as Agent for the Agency, has claimed sales and use tax exemptions for the Project not authorized by the Agency; and

*WHEREAS*, as contemplated by Section 874 (10)-(12) of the General Municipal Law (“GML”), the Agency established a Project Recapture and Termination Policy which requires the recapture of financial assistance including sales and use tax exemption amounts to which the Company was not entitled; and

*WHEREAS*, in accordance with Section 875(3) of the GML, if the Agency determines the Company was not entitled to claim certain sales and use tax exemptions claimed, then the Agency shall recapture such sales and use tax benefits from the Company; and

*WHEREAS*, Tax Bulletin ST-385 (TB-ST-385) sets forth the procedure to be followed in the event the Agency must recapture unauthorized sales and use tax exemption benefits claimed.

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

Section 1. The Agency hereby makes the following findings:

- A. The Company made unauthorized purchases in May, 2019; and
- B. The total value of the sales and use tax exemption benefits claimed by the Company were in the amount of \$1,528.25.

Section 2. The Executive Director of the Agency is hereby authorized and directed to recapture the amount of sales and use tax exemption benefits claimed by the Company and not authorized by the Agency, which amount is \$1,528.25.

Section 3. 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 and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. These Resolutions shall take effect immediately

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

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

The resolution was thereupon duly adopted.

STATE OF NEW YORK :  
:SS  
COUNTY OF SULLIVAN :

I, the undersigned (Assistant) Secretary 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 conference call on October 19, 2020 at 11:00 a.m. at which the following members were present:

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

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	[ <input checked="" type="checkbox"/> ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Suzanne Loughlin	[ <input checked="" type="checkbox"/> ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Edward T. Sykes	[ <input checked="" type="checkbox"/> ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Howard Siegel	[ <input checked="" type="checkbox"/> ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Scott Smith	[ <input checked="" type="checkbox"/> ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Paul Guenther	[ <input checked="" type="checkbox"/> ] Yes	[   ] No	[   ] Absent	[   ] Abstain
Joseph Perrello	[   ] Yes	[   ] No	[ <input checked="" type="checkbox"/> ] Absent	[   ] Abstain
Carol Roig	[   ] Yes	[   ] No	[ <input checked="" type="checkbox"/> ] 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 103(a) and (c) and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public via videoconferencing and public notice of the time and place of said meeting was duly given in accordance with such Sections 103(a) and (c) and 104, (iii) the meeting in all respects was duly held via teleconference as authorized by New York Governor Andrew Cuomo's Executive Order No. 202.67, and (iv) there was a quorum present throughout.

*IN WITNESS WHEREOF*, I have hereunto set my hand and seal on the 19<sup>th</sup> day of October, 2020.

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Secretary