

PRELIMINARY RESOLUTION
(Built Parcel Three, LLC/Built Parcel Four, LLC 2014 Facility)

A Regular meeting of the Dutchess County Industrial Development Agency was convened in public session on September 11, 2014 at 8:00 a.m., local time, at the office of the Dutchess County Industrial Development Agency, Three Neptune Road, Poughkeepsie, New York.

The meeting was called to order by the Chairman, with the following members being:

PRESENT: Charles Daniels, Chairman
Phyllis DiStasi Keenan, Secretary/Treasurer
Edward Summers
Mark Doyle

ABSENT: Timothy Dean, Vice Chairman
Henry Killian
Angela E. Flesland

ALSO PRESENT: Donald Cappillino, Agency Counsel
Catherine A. Maloney, Executive Director

On motion duly made by Edward Summers and seconded by Phyllis DiStasi Keenan, the following resolution (the "**Resolution**") was placed before the members of the Dutchess County Industrial Development Agency:

Resolution (i) Taking official action toward the issuance of financial assistance to Built Parcel Three, LLC and Built Parcel Four, LLC (Built Parcel Three, LLC/Built Parcel Four, LLC 2014 Facility) in the form of potential exemption from sales and use taxes, real estate transfer taxes and mortgage recording taxes and exemption from real estate property taxes, and; (ii) authorizing the execution and delivery of an agreement by and between the Agency and Built Parcel Three, LLC/Built Parcel Four, LLC with respect to such financial assistance.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the "**Act**"), the Dutchess County Industrial Development Agency (the "**Agency**") was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, constructing and equipping certain facilities as authorized by the Act; and

WHEREAS, both Built Parcel Three, LLC ("**BP3**") and Built Parcel Four, LLC, ("**BP4**"), both New York limited liability companies with offices at 25 Van Wagner Road,

Poughkeepsie, New York 12603 (the "Companies"), have requested that the Agency provide financial assistance in connection with the acquisition, improvement, construction, reconstruction, repair, refurbishing, installation, furnishing and equipping of a certain mixed use commercial facility (the "Facility") in three phases, known as "Van Wagner Place," and consisting of the following:

A. Phase I, all to be owned by BP3 and consisting of the refurbishment and redevelopment of approximately 1.12 acres of land, bearing tax map grid number 134689-6161-08-838906-0000 comprised of: (i) an existing two story, approximately 11,368 square foot office/commercial building at 25 Van Wagner Road, Poughkeepsie, New York; (ii) an existing two story, approximately 2,750 square foot office/commercial building located at 48 Springside Avenue, Town of Poughkeepsie, New York; (iii) an existing two story, approximately 3,636 square foot residential apartment building located at 52 Springside Avenue, Town of Poughkeepsie, New York; (iv) an existing two and one-half story, approximately 1,240 square foot residential apartment building located at 54 Springside Avenue, Town of Poughkeepsie, New York; (v) an existing one story, approximately 500 square foot garage adjacent to 48 Springside Avenue, Town of Poughkeepsie, New York used for commercial purposes; and (vi) site improvements including a 70+ car parking lot and an approximately 800 square foot children's garden; and

B. Phase II, all to be owned by BP4 and consisting of: (i) the refurbishment and redevelopment of an existing three story, approximately 2,250 square foot building located on approximately 2.32 acres of land at 45 Springside Avenue, Town of Poughkeepsie, New York, bearing tax map grid number 134689-6161-08-809927-0000, containing approximately 1,000 square feet of commercial space and one approximately 1,250 square foot residential apartment; (ii) the demolition and removal of the existing residential structure on an approximately .229 acre parcel of land located at 57 Springside Avenue, Town of Poughkeepsie, New York, bearing tax map grid number 134689-6161-08-845933-0000; (iii) the construction of a new three story, approximately 17,000 square foot, 16 unit residential apartment building located on the aforesaid 2.32 acre and .229 acre lots; and (iv) the construction of a new three story, approximately 10,800 square foot building containing approximately 3,600 square feet of commercial space and approximately 7,200 square feet of space to contain six residential apartments; and

C. Phase III, to be owned by BP3 and consisting of: (i) vacant land (the "Vacant Land") comprised of: (a) an approximately .69 acre parcel of land on Springside Avenue, bearing tax map grid number 134689-6161-08-821910-0000, abutting the west side of 25 Van Wagner Road, Town of Poughkeepsie, New York; (b) a .070 acre parcel of land in the road bed of the former Springside Avenue immediately to the west of the aforementioned .69 acre parcel of land; and (c) seven separate parcels of land totaling approximately .57 acres of land located between Springside Avenue and the Westbound Arterial (Maple Street) to be acquired from the New York State Department of

Transportation; and (b) the construction of a new five story, approximately 40,000 square foot building on the Vacant Land containing approximately 8,000 square feet of commercial space and approximately 32,000 square feet of space to contain 32 residential apartments; (c) construction of a new two and one-half story, approximately 4,100 square foot building on the Vacant Land containing approximately 2,100 square feet of commercial space and approximately 2,000 square feet of space to contain 2 residential apartments; and (d) the construction of site improvements on the Vacant Land including a 38 car parking lot; and

D. the acquisition and installation of new equipment, machinery and other personal property (collectively the “**Equipment**”) to be owned by the Agency and leased to the Companies to be used as part of the Facility; and

WHEREAS, the Facility includes the following, as they relate to the improvement, reconstruction, repair, refurbishing, installation, furnishing, equipping and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the expansion and modernization of and installation of equipment in the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the improvement, reconstruction, repair, refurbishing, installation, furnishing, equipping and completion of the Facility and installation of the tools, machinery and equipment; and

WHEREAS, the Agency has given due consideration to the application submitted by the Companies, in which it is represented by the Companies that the financial assistance (as defined herein) for the Facility will not result in the abandonment of a facility of the Companies located elsewhere in the State of New York; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted by the Department of Environmental Conservation of the State of New York (the laws and regulations hereinafter collectively referred to as “**SEQRA**”), the Agency is required to determine whether the financial assistance (as defined herein) for the Facility may have a significant effect on the environment and therefore require the preparation of an Environmental Impact Statement; and

WHEREAS, the Agency has yet to make a determination of environmental significance on this application but will do so prior to its grant of any financial assistance; and

WHEREAS, the proposed financial assistance to be granted by the Agency to the Companies consists of the exemption from sales and use taxes, real estate transfer taxes and mortgage recording taxes and exemption from real estate property taxes (the “**Financial Assistance**”) which deviates from the Dutchess County Uniform Tax Exemption Policy (the “**UTEP**”) but has been consented to by the April 16, 2014 Resolution of the Town of

Poughkeepsie Town Board, Resolution 4:16 - # SC 9 of 2014 and by the School Board of the Arlington Central School District on May 27, 2014 ; and

WHEREAS, the Agency has not yet held hearings pursuant to §147(f) of the Code, and pursuant to §859-a of Article 18-A of the General Municipal Law of the State of New York; and

WHEREAS, although the resolution authorizing the Financial Assistance has not yet been presented for approval by the Agency, a Preliminary Agreement relative to the proposed Financial Assistance has been presented for approval by the Agency.

NOW, THEREFORE, BE IT RESOLVED by the Dutchess County Industrial Development Agency, as follows:

1. Based upon the representations made by the Companies to the Agency, the Agency hereby finds and determines that:

- (a) The Facility constitutes a “project” within the meaning of the Act;
- (b) The Financial Assistance for the Facility will not result in the abandonment of a facility of the Companies;
- (c) The Financial Assistance for the Facility deviates from the Agency’s UTEP but has been consented to by the affected taxing jurisdictions, viz., the Town of Poughkeepsie and the Arlington Central School District;
- (d) In accordance with the Retail and Housing Policy of the Agency, the approval of the project by the Town of Poughkeepsie has been obtained; and
- (e) The Financial Assistance will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of Dutchess County, New York, and improve their standard of living, and thereby serve the public purposes of the Act; and
- (f) It is desirable and in the public interest for the Agency to assist the Companies by granting the Financial Assistance.

2. Subject to the conditions set forth in ¶3 of this Resolution, the Agency will:

- (a) acquire a leasehold interest in the Facility; and

- (b) sublease the Facility to the Companies and lease the Equipment to the Companies pursuant to agreements by and between the Agency and the Companies.

3. The provision of Financial Assistance herein, as contemplated by ¶2 of this Resolution, shall be subject to:

- (a) the execution and delivery by the Companies of the Preliminary Agreement attached hereto as Exhibit "A" setting forth certain conditions for the provision of the Financial Assistance;
- (b) the agreement between the Agency and the Companies on a mutually acceptable "Payment in Lieu of Tax Agreement" (the "PILOT Agreement"); and
- (c) compliance with SEQRA.

4. The form and substance of a proposed Preliminary Agreement (in substantially the form presented to this meeting) by and between the Agency and the Companies setting forth the undertakings of the Agency and the Companies with respect to the provision of Financial Assistance is hereby approved. The Executive Director of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Preliminary Agreement and the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency hereto and to attest to this meeting, with such changes in terms and conditions as the Executive Director shall constitute conclusive evidence of such approval.

5. The law firm of Nixon Peabody LLP, Rochester, New York, is hereby appointed Transaction Counsel to the Agency in relation to the provision of Financial Assistance.

6. Counsel to the Agency and Transaction Counsel for the Agency are hereby authorized to work with counsel to the Companies and others to prepare for submission to the Agency, all documents necessary to effect the authorization and provision of Financial Assistance. The Companies shall be responsible for the fees of Agency, Agency's Counsel and Transaction Counsel in relation to this Facility and the provision of Financial Assistance.

7. The Agency hereby approves and authorizes the following actions by the Chairman of the Agency, prior to the granting of any Financial Assistance with respect to the Facility, after consultation with counsel to the Agency and Transaction Counsel, (i) to establish the time, date and place for a public hearing of the Agency to hear all person interested in the Facility and the proposed Financial Assistance being contemplated by the Agency with respect to the Facility, said public hearing to be held in the Town of Poughkeepsie, Dutchess County, New York; (ii) to cause notice of such public hearing to be given to the public by publishing a notice in accordance with the applicable provisions of the N.Y. General Municipal Law, as well as, at the same time, provide notice of the hearing to the chief executive officer of each affected tax

jurisdiction; (iii) to conduct such public hearing or cause such hearing to be conducted by his designee; and (iv) to cause a stenographic transcript of said public hearing to be promptly prepared and cause copies of said report to be made available to the members of the Agency.

8. The Executive Director of the Agency is hereby authorized and directed to distribute copies of this Resolution to the Companies and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. The Agency hereby appoints each Member of the Agency and the Agency Counsel to serve as an Assistant Secretary of the Agency for purposes of this project.

10. This Resolution shall take effect immediately.

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

Charles Daniels III, Chairman	VOTING	"Aye"
Timothy Dean, Vice Chairman	Being	ABSENT
Phyllis DiStasi Keenan, Secretary/Treasurer	VOTING	"Aye"
Henry Killian	Being	ABSENT
Angela E. Flesland	Being	ABSENT
Edward Summers	VOTING	"Aye"
Mark Doyle	VOTING	"Aye"

The Resolution was thereupon declared duly adopted.

Adopted: September 11, 2014

EXHIBIT A

PRELIMINARY AGREEMENT
(Built Parcel Three, LLC/Built Parcel Four, LLC Project)

THIS PRELIMINARY AGREEMENT (the "Preliminary Agreement"), made as of September 11, 2014 between the **DUTCHESS COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation, organized and existing under the General Municipal Law of the State of New York, having offices at Three Neptune Road, Poughkeepsie, New York 12601 (the "Agency"), and **BUILT PARCEL THREE, LLC** and **BUILT PARCEL FOUR, LLC**, New York limited liability companies, both with offices located at 25 Van Wagner Road, Poughkeepsie, New York 12603 (the "Companies").

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York as amended and Chapter 335 of the Laws of 1977 of the State of New York (collectively the "Act"), the Agency was created with the authority and power to provide financial assistance for the purpose of, among other things, acquiring, constructing and equipping certain facilities as authorized by the Act; and

WHEREAS, both Built Parcel Three, LLC ("BP3") and Built Parcel Four, LLC, ("BP4"), have requested that the Agency provide financial assistance in connection with the acquisition, improvement, construction, reconstruction, repair, refurbishing, installation, furnishing and equipping of a certain mixed use commercial facility (the "Facility") in three phases, known as "Van Wagner Place," and consisting of the following:

A. Phase I, all to be owned by BP3 and consisting of the refurbishment and redevelopment of approximately 1.12 acres of land, bearing tax map grid number 134689-6161-08-838906-0000 comprised of: (i) an existing two story, approximately 11,368 square foot office/commercial building at 25 Van Wagner Road, Poughkeepsie, New York; (ii) an existing two story, approximately 2,750 square foot office/commercial building located at 48 Springside Avenue, Town of Poughkeepsie, New York; (iii) an existing two story, approximately 3,636 square foot residential apartment building located at 52 Springside Avenue, Town of Poughkeepsie, New York; (iv) an existing two and one-half story, approximately 1,240 square foot residential apartment building located at 54 Springside Avenue, Town of Poughkeepsie, New York; (v) an existing one story, approximately 500 square foot garage adjacent to 48 Springside Avenue, Town of Poughkeepsie, New York used for commercial purposes; and (vi) site improvements including a 70+ car parking lot and an approximately 800 square foot children's garden; and

B. Phase II, all to be owned by BP4 and consisting of: (i) the refurbishment and redevelopment of an existing three story, approximately 2,250 square foot building located on approximately 2.32 acres of land at 45 Springside Avenue, Town of Poughkeepsie, New York, bearing tax map grid number 134689-6161-08-809927-0000, containing approximately 1,000 square feet of commercial space and one approximately 1,250 square foot residential apartment; (ii) the demolition and removal of the existing

residential structure on an approximately .229 acre parcel of land located at 57 Springside Avenue, Town of Poughkeepsie, New York, bearing tax map grid number 134689-6161-08-845933-0000; (iii) the construction of a new three story, approximately 17,000 square foot, 16 unit residential apartment building located on the aforesaid 2.32 acre and .229 acre lots; and (iv) the construction of a new three story, approximately 10,800 square foot building containing approximately 3,600 square feet of commercial space and approximately 7,200 square feet of space to contain six residential apartments; and

C. Phase III, to be owned by BP3 and consisting of: (i) vacant land (the “**Vacant Land**”) comprised of: (a) an approximately .69 acre parcel of land on Springside Avenue, bearing tax map grid number 134689-6161-08-821910-0000, abutting the west side of 25 Van Wagner Road, Town of Poughkeepsie, New York; (b) a .070 acre parcel of land in the road bed of the former Springside Avenue immediately to the west of the aforementioned .69 acre parcel of land; and (c) seven separate parcels of land totaling approximately .57 acres of land located between Springside Avenue and the Westbound Arterial (Maple Street) to be acquired from the New York State Department of Transportation; and (b) the construction of a new five story, approximately 40,000 square foot building on the Vacant Land containing approximately 8,000 square feet of commercial space and approximately 32,000 square feet of space to contain 32 residential apartments; (c) construction of a new two and one-half story, approximately 4,100 square foot building on the Vacant Land containing approximately 2,100 square feet of commercial space and approximately 2,000 square feet of space to contain 2 residential apartments; and (d) the construction of site improvements on the Vacant Land including a 38 car parking lot; and

D. the acquisition and installation of new equipment, machinery and other personal property (collectively the “**Equipment**”) to be owned by the Agency and leased to the Companies to be used as part of the Facility; and

WHEREAS, the Facility includes the following, as they relate to the construction, erection and completion of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction of the Facility and installation of equipment in the Facility; and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction of the Facility and installation of the tools, machinery, and equipment; and

WHEREAS, the Agency has determined that the provision of financial assistant to the Facility will promote and further the purposes of the Act; and

WHEREAS, on September 11, 2014, the Agency adopted a Preliminary Resolution (the "Preliminary Resolution") authorizing the Facility and the execution of this Preliminary Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency and the Companies agree as follows:

1. Undertakings of the Agency. Based upon the statements, representations, and undertakings of the Companies and subject to the conditions set forth herein and in the Preliminary Resolution, the Agency agrees as follows:

(a) The Agency shall adopt, or cause to be adopted, such proceedings and authorize the execution of such documents as may be necessary or advisable for (i) acquisition, construction, installation, furnishing and equipping of the Facility and the financing of such costs; and (ii) the subleasing of the Facility to the Companies and leasing the Equipment to the Companies, all as shall be authorized by law and be mutually satisfactory to the Agency and the Companies.

(b) The Agency shall enter into an agreement to sublease the Facility to the Companies (the "Lease Agreement"). The Lease Agreement shall contain all provisions required by law and such other provisions as shall be mutually acceptable to the Agency and the Companies.

(c) The Agency shall take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

2. Representations of the Companies. The Companies hereby represent to the Agency that:

(a) The Facility is located in Dutchess County, New York;

(b) The proposed provision of financial assistance to the Facility will contribute to increased employment opportunities in Dutchess County, New York;

(c) The Companies intend that the Facility will comply with all applicable federal, state, and local laws, ordinance, rules, and regulations and the Companies shall have obtained all necessary approvals and permits required thereunder.

3. Undertakings of the Companies. Based upon the statements, representations, and undertakings of the Agency and subject to the conditions set forth herein and in the Preliminary Resolution, the Companies agree as follows:

(a) The Companies shall use all reasonable efforts necessary or desirable to enter into a contract or contracts for the acquisition of the Facility (to the extent not heretofore acquired) and on the terms and conditions set forth in the Lease Agreement, transfer to the Agency, or cause to be transferred to the Agency, title to, or a leasehold interest in, the Facility. The Companies shall use all reasonable efforts necessary or desirable to enter into a contract or contracts for the acquisition of the Equipment and on the terms and conditions set forth in the Lease Agreement, transfer to the Agency, or cause to be transferred to the Agency, title to the Equipment.

(b) (i) To the extent the Agency is not defended and indemnified under a policy of insurance maintained by the Companies, or either of them, and subject to any subrogation waivers contained in the Lease Agreement, the Companies shall defend and indemnify the Agency and hold the Agency harmless from all losses, expenses, claims, damages and liabilities arising out of or based on: (1) labor, services, materials and supplies, including equipment, ordered or used in connection with the acquisition of the Facility and installation of equipment in the Facility (including any expense incurred by the Agency in defending any claims, suits or actions which may arise as a result of any of the foregoing) except that the Company shall not be required to indemnify the Agency for the willful or grossly negligent conduct of Agency, its employees, agents or representatives; or (2) any untrue statement of a material fact necessary in order to make the statements herein, in the light of the circumstances under which they were made, not misleading.

(ii) The Companies shall not permit to stand, and shall at their own expense take all steps reasonably necessary to remove, or to bond over in a manner satisfactory to the Agency, any mechanic's or other liens against the Facility for labor for the acquisition, construction, installation, furnishing and equipping of the Facility.

(iii) To the extent the Agency is not defended and indemnified under a policy of insurance maintained by the Companies, or either of them, and subject to any subrogation waivers contained in the Lease Agreement, the Companies shall indemnify and hold the Agency harmless from all claims and liabilities for loss or damage to property or any injury to or death of any person that may be occasioned subsequent to the date hereof by any cause whatsoever in relation to the Facility, including any expenses incurred by the Agency in defending any claims, suits or actions which may arise as a result of the foregoing, except that the Companies shall not be required to indemnify the Agency for the willful or grossly negligent conduct of the Agency, its employees, agents, or representatives.

(c) The Companies shall, as agent for the Agency, comply with the requirements of Article 8 of the Labor Law of the State of New York, as amended, to the extent, if any, such Article is applicable to the Facility.

(d) The Companies shall take such further action and adopt such further proceedings as may be required to implement its aforesaid undertakings or as they may deem appropriate in pursuance thereof.

4. General Provisions.

(a) This Preliminary Agreement shall take effect on the date of execution hereof until the Lease Agreement becomes effective. It is the intent of the Agency and the Companies that this Preliminary Agreement be superseded in its entirety by the Lease Agreement.

(b) It is understood and agreed by the Agency and the Companies that the execution of the Lease Agreement and related documents are subject to: (i) obtaining all necessary governmental approvals, (ii) approval of the members of the Agency; and (iii) agreement by the Agency and the Companies upon mutually acceptable terms to a Payment-in-Lieu-of-Taxes Agreement.

(c) The Companies agree that they will reimburse the Agency for all reasonable and necessary direct out-of-pocket expenses which the Agency may incur as a consequence of executing this Preliminary Agreement or performing its obligations hereunder, including but not limited to, the cost of causing a notice of any public hearing held with respect to the Facility to be published, the cost of making and transcribing records of said hearings and the reasonable fees and expenses charged and incurred by Transaction Counsel and Agency's Counsel in connection with their representation of Agency in this matter and their preparation of any documents pertaining to the provisions of Financial Assistance.

(d) All commitments of the Agency under ¶1 hereof and of the Companies under ¶¶2 and 3 hereof (excepting the obligations of the Companies set forth in subparagraphs 3(b) and 4(c) hereof, which shall survive the termination of this Preliminary Agreement) are subject to the condition that the Lease Agreement and a PILOT Agreement shall have been executed no later than fifteen (15) months from the date hereof (or such other date as shall be mutually satisfactory to the Agency and the Companies).

IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the 11th day of September, 2014.

DUTCHESS COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Catherine A. Maloney, Executive Director

BUILT PARCEL THREE, LLC

By: _____
Steven Tinkelman, Managing Member

BUILT PARCEL FOUR, LLC

By: _____
Steven Tinkelman, Managing Member

