

Board Member Coke offered the following resolution and moved its adoption:

**RESOLUTION 2023-1-10-2**

**RESOLUTION AUTHORIZING AMENDED AND RESTATED BONDS AND AMENDMENTS TO RELATED BOND DOCUMENTS IN CONNECTION WITH THE PUTNAM COUNTY INDUSTRIAL DEVELOPMENT AGENCY INDEX INTEREST RATE INDUSTRIAL DEVELOPMENT REFUNDING REVENUE BONDS (SINCERITY +, LLC PROJECT), SERIES 2013 AND THE TAKING OF OTHER ACTION IN CONNECTION THEREWITH**

WHEREAS, the Putnam County Industrial Development Agency (the "Agency") is authorized under the laws of the State of New York, and in particular under the provisions of the New York State Industrial Development Agency Act, and Chapter 399 of the 1987 Laws of the State of New York, as amended (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York (the "State") and to improve their prosperity and standard of living; and

WHEREAS, on December 30, 2013, the Agency issued its Index Interest Rate Industrial Development Refunding Revenue Bonds (Sincerity +, LLC Project), Series 2013 in the aggregate principal amount of \$8,130,000 (the "Series 2013 Bonds") pursuant to a resolution adopted by the Agency on December 10, 2013 and an Indenture of Trust, dated as of December 1, 2013 (the "2013 Indenture"), between the Agency and U.S. Bank Trust Company, National Association (formerly, U.S. Bank National Association), as trustee, for the purpose of refinancing the Agency's Industrial Development Revenue Bonds, Series 2004 (Sincerity +, LLC Facility) in a principal amount not to exceed \$9,900,000, which were issued to finance costs of (a) the acquisition of land in the Town of Southeast in Putnam County, the construction of an approximately 99,000 square foot warehouse and office building thereon and the installation of certain equipment to be owned by Sincerity +, LLC, a New York limited liability company (the "Company") for lease to, and use by Ace Endico Corp. a New York corporation (the "Affiliate") for food processing, distribution, warehousing and office space (such facility and all improvements, equipment and personal property therein and thereon, the "Facility"), all for commercial purposes; and

WHEREAS, in connection with the issuance of the Series 2013 Bonds, the Agency and the Company entered into a certain Amended and Restated Lease Agreement dated as of December 1, 2013 (the "2013 Lease"), providing for the continued leasing of the Facility by the Agency to the Company; and

WHEREAS, in connection with the issuance of the 2013 Bonds, the Agency assigned substantially all of its rights in and to the 2013 Lease to the Trustee pursuant to an Amended and Restated Pledge Agreement, dated as of December 1, 2013 (the “2013 Pledge and Assignment”); and

WHEREAS, the Series 2013 Bonds were purchased by, and continue to be held by, Wells Fargo Bank, National Association (the “Bondholder”); and

WHEREAS, to facilitate an addition to the Facility, on October 27, 2017, at the request of the Company, the Agency and the Company entered into a certain First Amendment to Amended and Restated Lease Agreement dated as of October 1, 2017 (the “2017 Lease Amendment”), providing for the construction, renovation and equipping of the approximately 117,000 square foot existing building located at the Facility by an additional approximately 63,000 square feet (consisting of the addition of approximately 51,740 square feet of cold storage warehouse and distribution space and approximately 11,242 square feet of office space) (the “2017 Expansion Project”); and

WHEREAS, to facilitate the 2017 Expansion Project, the Agency and the Company entered into a “straight-lease transaction” within the meaning of the Act pursuant to which the Agency and the Company amended the 2013 Lease pursuant to the 2017 Lease Amendment (the 2013 Lease, as so amended by the 2017 Lease Amendment, is referred to collectively as the “Facility Lease”); and

WHEREAS, concurrently with the issuance of the Series 2013 Bonds, the Agency and the Company entered into one or more mortgages with respect to the Facility to secure the Series 2013 Bonds (the “2013 Bond Mortgage”) and, concurrently with the execution of the 2017 Lease Amendment, the Agency and the Company entered into one or more mortgages to secure certain loans made by Wells Fargo Bank, National Association, as lender (the “Lender”) to the Company (the “2017 Loan Mortgages”); and

WHEREAS, the interest rate with respect to the Series 2013 Bonds was based upon a formula related to the U.S. Dollar London Interbank Offered Rate (“LIBOR”), and LIBOR is soon scheduled to be discontinued; and

WHEREAS, each of the Company and the Bondholder have requested that the Agency amend the Series 2013 Bonds to replace LIBOR with the Secured Overnight Financing Rate that is currently published by the Federal Reserve Bank of New York (“SOFR”) as the referenced rate for the Series 2013 Bonds; and

WHEREAS, in order to effect such interest rate change with respect to the Series 2013 Bonds, it is necessary to (a) amend and restate the Series 2013 Bonds (the “Amended and Restated Series 2013 Bonds”), (b) amend and restate the Facility Lease with a Second Amended and Restated Lease Agreement (the “Second Amended and Restated Lease Agreement”), (c) amend the 2013 Indenture with a First Supplemental Indenture of Trust (the “First Supplemental Indenture”), (d) amend and restate the 2013 Bond Mortgage and the 2017 Loan Mortgages, and (e) amend and restate the 2013 Pledge and Assignment, among other documents (the amendments to each of such documents to which the Agency is a party, together with such other documents

deemed advisable or related thereto, being collectively referred to as the "Amending Documents"), and the Company has requested that the Agency take appropriate action to authorize the Amended and Restated Series 2013 Bonds and the Amending Documents; and

WHEREAS, the Agency desires to accommodate such request of the Company;

NOW, THEREFORE, BE IT RESOLVED BY PUTNAM COUNTY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The Agency hereby authorizes the execution and delivery of the Amended and Restated Series 2013 Bonds and the terms thereof, to amend and restate the Series 2013 Bonds. The Amended and Restated Series 2013 Bonds shall never constitute a debt of the State of New York or of the County of Putnam, and neither the State of New York nor the County of Putnam shall be liable thereon, nor shall the Amended and Restated Series 2013 Bonds be payable out of any funds of the Agency other than those pledged therefor.

Section 2. The execution and delivery of the Amending Documents are hereby authorized. The Chairman and the Vice Chairman of the Agency are hereby authorized to execute, acknowledge and deliver each such Amending Document. The execution and delivery of each such Amending Document by said officer shall be conclusive evidence of due authorization and approval.

Section 3. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution and contained in the Amending Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution and the Amending Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in any of the Amending Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, director, officer, agent or employee of the Agency in his individual capacity, and neither the members of the Agency nor any officer executing the Amended and Restated Series 2013 Bonds or any of the Amending Documents shall be liable personally on the Amended and Restated Series 2013 Bonds or on any of the Amending Documents or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 4. The officers of the Agency are hereby designated the authorized representatives of the Agency, and each of them is hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this

Resolution, the Amending Documents and the issuance of the Amended and Restated Series 2013 Bonds.

Section 5. The Agency recognizes that due to the unusual complexities of the financing it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chairman and the Vice Chairman to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by the certificate of determination of an officer of the Agency.

Section 6. This Resolution shall take effect immediately.

ADOPTED: January 10, 2023

The adoption of the foregoing resolution was seconded by Board Member \_\_\_\_\_ and duly put to a vote on roll call, which resulted as follows:

AYES:

NOES:

The resolution was declared adopted.

\*\*\*

# Record of Roll Call Vote

## RESOLUTION 2023-1-10-2

RESOLUTION AUTHORIZING AMENDED AND RESTATED BONDS AND AMENDMENTS TO RELATED BOND DOCUMENTS IN CONNECTION WITH THE PUTNAM COUNTY INDUSTRIAL DEVELOPMENT AGENCY INDEX INTEREST RATE INDUSTRIAL DEVELOPMENT REFUNDING REVENUE BONDS (SINCERITY +, LLC PROJECT), SERIES 2013 AND THE TAKING OF OTHER ACTION IN CONNECTION THEREWITH

January 10, 2023

PCIDA Conference Room, Patterson, NY

MEETING DATE

MEETING LOCATION

Board Member \_\_\_\_\_ offered the above resolution and moved its adoption.

The resolution was seconded by Board Member \_\_\_\_\_ and duly put to a vote on roll call, which resulted as follows:

<u>Board Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Abby O'Brien	___	___	___	___
Simon Carey	___	___	___	___
Ben Cheah	___	___	___	___
Edward Cooke	___	___	___	___
Joe Downey	___	___	___	___
Mike Karlsson	___	___	___	___
Bill Nulk	___	___	___	___

AYES: \_\_\_\_\_ NOES: \_\_\_\_\_ The resolution was declared adopted.

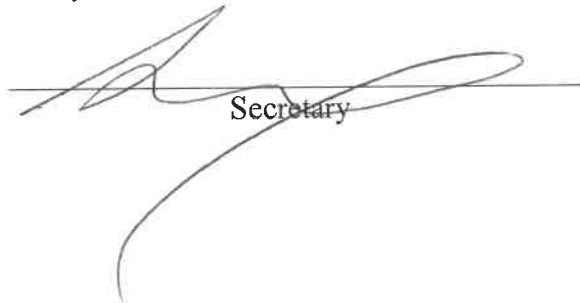
Testified: \_\_\_\_\_ Title: \_\_\_\_\_

\*\*\*

SECRETARY'S CERTIFICATE

I, Joseph M. Downey, being the duly appointed and acting Secretary of the Putnam County Industrial Development Agency, New York, HEREBY CERTIFY that the foregoing resolution of a meeting of the Members of the Putnam County Industrial Development Agency duly called and held on January 10, 2023, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of said Board and is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relates to the subject matters referred to in said extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Agency this 10 day of January, 2023.

  
Secretary

Board Member Coote offered the following resolution and moved its adoption:

**RESOLUTION 2023-1-10-1**

**RESOLUTION OF THE PUTNAM COUNTY INDUSTRIAL DEVELOPMENT AGENCY ADOPTED JANUARY 10, 2023, APPROVING THE SINCERITY+, LLC 2023 EXPANSION PROJECT STRAIGHT-LEASE TRANSACTION**

WHEREAS, the Putnam County Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular under the provisions of the New York State Industrial Development Agency Act, and Chapter 399 of the 1987 Laws of the State of New York, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York (the “State”) and to improve their prosperity and standard of living; and

WHEREAS, Sincerity +, LLC, a limited liability company organized and existing under and by virtue of the laws of the State of New York (the “Company”), and Ace Endico Corp., a corporation organized and existing under and by virtue of the laws of the State of New York (the “Affiliate”, and, together with the Company, the “Applicant”), have submitted an Application dated December 1, 2022 (the “Application”) to the Agency for financial assistance with respect to the expansion of the existing 176,350 square foot facility (the “Facility”) located at 80 International Boulevard, Brewster, New York (the “Premises”), consisting of the construction of a 60,000 square foot extension to the south side of the existing building, the reconfiguration/expansion of the parking around the building, the relocation of International Boulevard, and the purchase of racking, refrigeration and other materials related to the fit-out of the building, as well as fixtures, equipment and furniture (the “Project”); and

WHEREAS, the Facility has been the subject of the provision of prior financial assistance by the Agency in 2004, 2013 and 2017; and

WHEREAS, the Application sets forth certain information with respect to the Applicant, including that Agency financial assistance is needed for the Applicant to move forward with the Project in Putnam County (the “County”) and New York State; and

WHEREAS, the Applicant estimates in its application that approximately 40 new full-time equivalent jobs will be created as a result of the Project with respect to the expansion of the Facility; and

WHEREAS, the Agency proposes to provide financial assistance in the form of PILOT payments, sales tax exemptions and mortgage recording tax exemptions to the Company in developing the Project by entering into a straight-lease transaction (as such term is defined in the Act); and

WHEREAS, in order to provide financial assistance to the Company for the Project, the Agency intends to enter a lease/leaseback arrangement with respect to the Premises, the improvements and the equipment, to enter into a payment in lieu of taxes agreement, and to enter into a sales tax benefits and mortgage recording tax exemption agreement; and

WHEREAS, on December 9, 2022, the Agency published in *The Journal News* (the publication of such notice on such date and in such newspaper being hereby ratified and approved) a notice of a public hearing for the Project to be held on December 21, 2022 at 10:00 o'clock A.M., which public hearing was duly held at the Town of Southeast Town Hall, 1360 Route 22, Brewster, New York,

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE PUTNAM COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby accepts the Application.

Section 2. The Agency hereby determines that (i) the Project is authorized by the Act, (ii) the Project constitutes a "project" within the meaning of the Act and will be in furtherance of the policy of the State of New York, (iii) there will be no loss of jobs in the County as a result of the Agency providing financial assistance to the Project, and (iv) the Project will provide additional jobs within the County. The Agency further determines that (x) the Project shall not result in the removal of any facility or plant of the Applicant or any other occupant or user of the Facility from outside of the County (but within the State) to within the County or in the abandonment of one or more facilities or plants of the Applicant or any other occupant or user of the Facility located within the State (but outside of the County); (y) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant or for the purpose of advertising or promotional materials which depict elected or appointed government officials in either print or electronic media, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, and (z) nor more than one-third of the total Project Cost is in respect of facilities or property primarily used in making retail sales of goods or services to customers who personally visit such facilities within the meaning of section 862 of the New York General Municipal Law.

Section 3. For purposes of compliance with the State Environmental Quality Review Act ("SEQRA"), the Planning Board of the Town of Southeast (the "Planning Board") has acted as lead agency for a review with respect to certain actions relating to the Project, and by various resolutions issued a Determination of Non-significance with respect to the Project. The Agency determines pursuant to SEQRA that based on the findings and actions of the Planning Board, the actions of the Agency in granting financial assistance will have no significant adverse environmental impacts or effects.

Section 4. To accomplish the purposes of the Act and to provide financial assistance to the Company in connection with the Project, a straight-lease transaction for the Project is hereby authorized subject to the provisions of this Resolution and to the project agreements hereinafter authorized.

Section 5. The Agency hereby approves financial assistance (“Financial Assistance”) in connection with the Project in the form of: (i) sales tax exemptions with respect to the cost of using or acquiring materials and equipment in the maximum amount of \$754,200 with respect to the \$9,000,000 cost of construction materials and equipment for the Project; (ii) payment-in-lieu-of-tax benefits in amounts to be determined pursuant to the Agency’s Uniform Tax Exemption Policy; and (iii) exemptions from mortgage recording tax with respect to an approximately \$18,500,000 mortgage(s) securing the financing for the Project (to the extent permitted by applicable law). The Agency shall appoint the Company as the Agency’s agent for purposes of acquiring, constructing, equipping and installing the Project.

Section 6. In connection with the Project, the execution and delivery of (i) a quitclaim deed from the Agency to the Company conveying to the Company all of the Agency’s right, title and interest in and to the Premises, (ii) a Company Lease between the Company and the Agency pursuant to which the Company will lease the Premises to the Agency, (iii) a Second Amended and Restated Lease Agreement (the “Lease Agreement”) between the Agency and the Company pursuant to which the Agency will sublease the Premises and the Project personalty to the Company (for sublease by the Company to the Affiliate), (iv) a Third Amended and Restated Payment in Lieu of Taxes Agreement (the “PILOT Agreement”) between the Agency and the Company with respect to the Project, (v) a Sales Tax Exemption and Other Benefits Agreement (the “Sales Tax Exemption and Other Benefits Agreement”) between the Agency and the Company; (vi) a Third Amended and Restated PILOT Mortgage from the Agency and the Company to the County of Putnam, the Town of Southeast and the Brewster Central School District; (vii) an Agency Guaranty Agreement from the Company and the Affiliate in favor of the Agency, (viii) one or more mortgages of the Premises to Wells Fargo Bank, National Association, as construction lender to the Company for the Project, and (ix) such additional agreements, amending agreements, papers, instruments, opinions, certificates, affidavits and other documents reasonable or necessary to carry out the purposes of this Resolution or the agreements referred to herein (the foregoing being referred to collectively as a “Project Documents”) are hereby authorized. Any Authorized Representative (as hereinafter defined) is hereby authorized to execute, acknowledge and deliver each such Project Document, and to affix the seal of the Agency on each such Project Document, if required, and attest the same. The execution and delivery of each such Project Document by one of said Authorized Representatives in substantially the form used in similar straight-lease transactions, with such changes, insertions and omissions as may be approved by the Authorized Representative, shall be conclusive evidence of due authorization and approval.

Section 7. Pursuant to the Agency’s Recapture Policy, attached hereto as Exhibit A (the “Recapture Policy”), the Agency hereby establishes the Material Factors for the Project. Upon the occurrence of any of the following conditions, the Agency may make demand upon the Company or the Affiliate in accordance with the relevant Project Documents for reimbursement of any category of Financial Assistance:

(a) the Company fails to complete the Project by the date required in the Lease Agreement;

(b) the Company or the Affiliate (without double-counting) has created less than thirty-two (32) full-time equivalent jobs at the Project as of December 1, 2026, and failed to maintain at the Facility at least 671 full-time equivalent jobs for 10 years from the closing date;

(c) The Company or the Affiliate liquidates its operations or assets at the Facility (absent a showing of extreme hardship as determined by the Agency in its reasonable discretion);

(d) The Company or the Affiliate ceases all or substantially all of its operations at the Facility (whether by relocation to another facility, or otherwise, or whether to another location either within, or outside of the County);

(e) The Company or the Affiliate transfers all or substantially all of its employees to a location outside of the County;

(f) The Company or the Affiliate effects a substantial change in the scope and nature of the operations at the Project, as determined by the Agency in its reasonable discretion;

(g) The Company or the Affiliate assigns or subleases all or any portion of the Facility in violation of the limitations imposed by the Lease Agreement, without the prior written consent of the Agency;

(h) The Company or the Affiliate sells, leases, transfers or otherwise disposes of all or substantially all of its interest in the Project, except (i) in connection with a transfer or other disposition to any corporation or other entity into or with which the Company may be merged or consolidated or to any corporation or other entity which shall be an affiliate, subsidiary, parent or successor of the Company or the Affiliate or (ii) as permitted under the Lease Agreement; or

(i) An Event of Default under the Lease Agreement or the PILOT Agreement, or a default under the Sales Tax Exemption and Other Benefits Agreement, shall occur;

(j) The Company or the Affiliate violates the provisions of the Agency's "Workforce Policy" adopted on December 30, 2021.

If any of the foregoing conditions occur during the term of the Lease Agreement, the Agency may take such actions, consistent with the Recapture Policy, as set forth in the PILOT Agreement, the Sales Tax Exemption and Other Benefits Agreement and the Agency Guaranty Agreement (the "Agreements") including reduction of financial assistance, termination of financial assistance and recapture of financial assistance ("Reimbursement Actions"). However, the Agency, has the right, but not the obligation, to reduce or eliminate any of the Reimbursement Actions as set forth in the Agreements.

Section 8. The Agency authorizes the Affiliate and the Company to proceed with the Project as herein authorized. The Affiliate and the Company are authorized to proceed with the Project on behalf of the Agency as set forth in this Resolution; provided, however, that it is acknowledged and agreed by the Affiliate and the Company that (i) nominal fee or leasehold title to or other interest of the Agency in the Project shall be in the Agency for purposes of granting financial assistance, and (ii) the Affiliate and the Company are hereby constituted the agents for the Agency solely for the purpose of effecting the Project, and the Agency shall have no personal liability for any such action taken by the Affiliate or the Company for such purpose.

Section 9. Any expenses incurred by the Agency with respect to the Project (including the fees of its project counsel) shall be paid by the Affiliate and the Company. By acceptance hereof, the Affiliate and the Company agree (y) to pay such expenses and further agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and (z) to comply with Sections 875(1) and (3) of the New York General Municipal Law.

Section 10. Either one of the Chair and the Vice-Chair of the Agency (as used in this Resolution, an "Authorized Representative") is hereby designated an authorized representative of the Agency and each is hereby authorized to execute and deliver the Project Documents. The Authorized Representatives are hereby authorized and directed to execute and deliver any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution. The Agency recognizes that due to the unusual complexities of the transaction it may become necessary that certain of the terms approved hereby may require modifications which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Authorized Representative to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution. The approval of such modifications shall be evidenced by a certificate of determination of an Authorized Representative. The members, officers, representatives and agents of the Agency are hereby authorized and directed to take all actions deemed appropriate to assist the Affiliate and the Company in commencing and carrying out the Project.

Section 11. Any Authorized Representative of the Agency is 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 in connection with the execution of all Project 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 this resolution and to cause compliance by the Agency with the terms, covenants and provisions of the Project Documents.

Section 12. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and the Project Documents shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this resolution and the Project Documents shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

Section 13. No covenant, stipulation, obligation or agreement contained in this resolution or the Project Documents shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency or the County of Putnam in

his or her individual capacity and neither the members of the Agency nor any officer shall be subject to any personal liability or accountability by reason of the execution thereof.

Section 14. The law firm of Hawkins Delafield & Wood LLP is hereby appointed counsel to the Agency for this straight-lease transaction.

Section 15. In adopting this Resolution, notwithstanding any other provision hereof, the Agency assumes no responsibility for obtaining or assisting the Company or the Affiliate in obtaining financing for the Project. This Resolution is not a contract between the Agency and the Company or the Affiliate and shall not be construed as such.

Section 16. This Resolution may be deemed by the Agency to have expired at any time after twelve (12) months from the date hereof, unless (a) extended by the Company with the consent of the Agency and by the payment of any Agency fees therefor or (b) the financing has been consummated or closed. Any extension or renewal will be for an additional twelve (12) months.

Section 17. This resolution shall take effect immediately.

ADOPTED: January 10, 2023

Received, Acknowledged and Agreed: January 11, 2023

**SINCERITY +, LLC**

By: William A. Endico  
Name: William A. Endico  
Title: CEO

**ACE ENDICO CORP.**

By: M. C. Endico  
Name: Michael Endico  
Title: President

# Record of Roll Call Vote

## RESOLUTION 2023-1-10-1

RESOLUTION OF THE PUTNAM COUNTY INDUSTRIAL DEVELOPMENT AGENCY ADOPTED JANUARY 10, 2023 APPROVING THE SINCERITY+, LLC 2022 EXPANSION PROJECT STRAIGHT-LEASE TRANSACTION

January 10, 2023

PCIDA Conference Room, Patterson, NY

MEETING DATE

MEETING LOCATION

Board Member Cooke offered the above resolution and moved its adoption.

The resolution was seconded by Board Member Downey and duly put to a vote on roll call, which resulted as follows:

<u>Board Member</u>	<u>Yes</u>	<u>No</u>	<u>Abstain</u>	<u>Absent</u>
Abby O'Brien	✓	—	—	—
Simon Carey	✓	—	—	—
Ben Cheah	—	—	—	✓
Edward Cooke	✓	—	—	—
Joe Downey	✓	—	—	—
Mike Karlsson	—	—	—	✓
Bill Nulk	✓	—	—	—

AYES: 5 NOES: 0 The resolution was declared adopted.

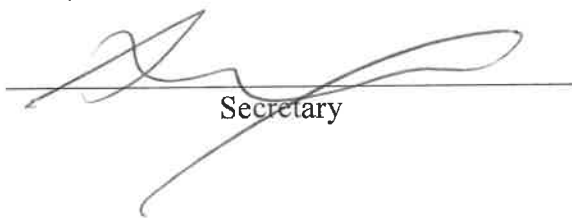
Testified: \_\_\_\_\_ Title: \_\_\_\_\_

\*\*\*

SECRETARY'S CERTIFICATE

I, Joseph M. Downey, being the duly appointed and acting Secretary of the Putnam County Industrial Development Agency, New York, HEREBY CERTIFY that the foregoing resolution of a meeting of the Members of the Putnam County Industrial Development Agency duly called and held on January 10, 2023, has been compared by me with the original minutes as officially recorded in my office in the Minute Book of said Board and is a true, complete and correct copy thereof and of the whole of said original minutes so far as the same relates to the subject matters referred to in said extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Agency this 10 day of January, 2023

  
Secretary

## Exhibit A



### **Putnam County Industrial Development Agency**

2 Route 164, Suite 2B

Patterson, NY 12563

845-808-1031 [www.putnamida.com](http://www.putnamida.com)

## **Recapture Policy**

### **Purpose**

To establish a procedure and policy to be compliant with the new enabling legislation, established by the NYS Office of the Comptroller, that would establish Material Factors which would be used to determine if a company which is receiving financial assistance is meeting the obligations required and stated in the approval and project agreements, and if not, to establish a process to review and determine if a reduction, termination and/or recapture of financial assistance is required.

### **Material Factors**

The agency, for each project seeking financial assistance, will establish Material Factors which are to be defined and stated in the approving board resolution and project agreements. The required Material Factors, which will be explicit and measurable and may include items such as investment, job creation, retention, or other factors as determined by the board, may vary by project type or specific application. Each project approved by the board will have identified material factors, which will be measured and evaluated to determine if a project receiving financial assistance has met and or continues to meet the required obligations as set by the board at the time of project approval. (See attached best practice recommendations.)

For certain numerical Material Factors such as job creation, investment amount, etc., it is recommended that the board set an acceptable achievement factor, which would constitute compliance with the Material Factor requirement, not less than 85% of job creation or retention goals. For non-numeric factors, each board should determine how the project will be evaluated to demonstrate that it has met the Material Factor requirement.

The Board may consider a number of evaluative criteria when determining whether to approve a project for financial assistance; however, a Material Factor shall differ from Evaluative Criteria in that it should be directly measurable and will be utilized to determine whether a project has met its requirements under the conditions of project approval and project agreement.

### **Material Factor Monitoring**

The agency shall develop a reporting/monitoring system to determine whether the Material Factors have been met or are being met over the term of the financial assistance, such as the duration of the PILOT agreement. Some Material Factors may be required and complied with over the term of the financial assistance—i.e., jobs—others may be a one-time check—i.e., project investment. For Material Factors that are multi-year, the agency will monitor for compliance on at least an annual basis, and for the full

term of the financial assistance period. Upon project approval, the Board should be explicit in its project approvals, the Material Factors upon which the project will be evaluated, the measurable criteria, and the term for which each factor will be monitored.

Monitoring reports may be provided directly by the project applicant, from staff, field visits, or through various other methods as determined by the Board. Monitoring efforts should be documented in writing to verify compliance with Material Factor requirements.

Monitoring and compliance reports should be presented to the Board of Directors on an annual basis. If it is determined that a project receiving financial assistance has not met or maintained compliance with a Material Factor, term, or condition of the project agreement, or any other condition as set by the board, the Agency shall develop a procedure to resolve non-compliance issues, or may undertake termination, reduction, or recapture efforts.

### **Non-Compliance Process**

If a company is found to be in violation or non-compliant with a Material Factor during the course of the compliance period, the agency shall have a written procedure to determine if an action by its Board is necessary.

If, during the annual monitoring and or reporting period, it is found that a company which is receiving financial assistance (which shall be defined as Sales, PILOT or Mortgage Recording Tax incentives), is non-compliant or in violation, the agency shall undertake the following:

1. The agency shall notify the company in writing that in the agency's determination they are or have violated a Material Factor.
2. The company shall be given an opportunity to remedy the violation.
3. The agency shall seek additional information/ explanation from the company as to why a Material Factor was not achieved. These may include economic or natural factors that led to the default. These factors should be discussed and predetermined to the extent possible by the Board and may include items such as, natural disaster, industry dynamics, unfair competition, or economic events that were outside the control of the company.
4. The company shall be provided the opportunity to present before the Board or designated committee, any information as outlined in #3 above regarding why the Material Factor was not achieved.

### **Board Actions**

Actions regarding taking no action to recapture benefits, reduction, termination, or recapture of financial assistance should be made by the Board. The following options are recommended as considerations for actions when considering Material Factor compliance or violations of terms and conditions of project agreements.

1. Upon a review of the facts regarding a non-compliance determination, the Board may determine that the cause of the non-compliance was a valid reason for not meeting the Material Factor and may consider the matter closed without further action, or set a specific time period to give an

opportunity for the company to achieve compliance. This may also be accompanied by a period of increased reporting (i.e., review violated Material Factor(s) quarterly until remedied).

2. If a company is ultimately unable to meet a Material Factor or is in continued violation of the terms and conditions as set forth in the project agreement, the Board shall develop procedures and policies which will define when it will take actions regarding reduction, termination, or recapture of financial assistance. Below are listed several best practice options that may be undertaken.

### **Reduction of Financial Assistance**

At the discretion of the Board, it may consider a reduction in assistance as an appropriate action to take in the event of a Material Factor or project agreement non-compliance. The reduction may be set at the sole discretion of the Board, or may be based on a pro-rata basis, depending on the extent of the Material Factor non-compliance. As an example, a project may have met three (3) out of four (4) Material Factors and the board could consider a 25% reduction in PILOT scheduled abatements, or a project may have only met 80% of a specific Material Factor, i.e., job creation or investment, and a 20% reduction in assistance may be considered. This same pro-rata concept may be applied to Material Factors which are multi-year and are enforced over the term of a PILOT, i.e., project met job retention goals for 8 of 10 years, etc.

### **Termination of Financial Assistance**

In addition to the typical reasons why a Board may act to terminate financial assistance such as, closure, change of use, change of ownership, etc., a Board may elect to terminate any ongoing financial assistance to a company. Reasons for termination should be explicit and may include continued non-compliance with a Material Factor, continued violation of the terms and conditions of the Project Agreement, failure to comply with ongoing reporting or compliance requirements of the agency, and an action by the Board to recapture financial assistance shall be accompanied by a termination of ongoing financial assistance.

### **Recapture of Financial Assistance**

The Board may take action to recapture a portion or all of the financial assistance provided to a company. Actions to recapture shall be made by decision of the Board and shall be reserved for continued and/or severe violations of Material Factors or the terms and conditions of the Project Agreement. An event leading to recapture may include an applicant knowingly providing false information on an application or a compliance/monitoring report; the Board finds that the company did not make a good faith effort or have any intention of meeting a Material Factor or a term and condition of the Project Agreement; the company ceases operations and/or relocates prior to fulfilling the length of term for a Material Factor; or the company demonstrates a wanton disregard for state and or local laws or regulations.

In the event the agency is successful in receiving recaptured financial assistance, such funds shall be returned to the appropriate affected taxing jurisdictions, unless otherwise agreed upon by the local taxing jurisdiction.