

FINAL RESOLUTION
(B&H Railcorp. Project)

A regular meeting of the Steuben County Industrial Development Agency was convened on Thursday, June 25, 2020.

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

Resolution No. 06/2020 - 07

RESOLUTION OF THE STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACKNOWLEDGING THE PUBLIC HEARING HELD WITH RESPECT TO B&H RAILCORP. ON JUNE 19, 2020; (ii) AUTHORIZING FINANCIAL ASSISTANCE (AS MORE FULLY DESCRIBED BELOW) FOR THE BENEFIT OF B&H RAILCORP. (THE "COMPANY"); (iii) MAKING A DETERMINATION WITH RESPECT TO ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW AND 6 N.Y.C.R.R. PART 617; AND (iv) AUTHORIZING THE EXECUTION AND DELIVERY OF SECOND AMENDMENTS TO THE EXISTING LEASE AGREEMENT, LEASEBACK AGREEMENT AND PILOT AGREEMENT BY AND BETWEEN THE AGENCY AND THE COMPANY, AND THE EXECUTION AND DELIVERY OF OTHER RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 178 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act"), the **STEUBEN COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, **B&H RAILCORP.** (the "Company"), previously requested the Agency assist the Company with a certain project (the "Original Project") consisting of: (i) the acquisition by the Agency of an interest in certain parcels of land located in Steuben County, New York (the "Land") and the existing improvements located thereon consisting principally of approximately seventeen (17) miles of rail line running between Bath and Painted Post, New York (the "Original Improvements"; and, together with the Land, the "Existing Facility"), and (ii) the lease back of the Agency's interest in the Existing Facility to the Company, all for the purpose of providing the Company with a real property tax abatement with respect to the Existing Facility; and

WHEREAS, in connection with the Original Project, the Agency and the Company entered into (i) a certain Lease Agreement, by and between the Company, as lessor, and the Agency, as lessee, dated as of December 1, 2001 (the "Original Lease Agreement"), (ii) a certain

Leaseback Agreement, by and between the Agency, as sublessor, and the Company, as sublessee, dated as of December 1, 2001 (the "Original Leaseback Agreement"), and (iii) a certain Payment-in-Lieu-of-Tax Agreement, by and between the Agency and the Company, dated as of December 1, 2001 (the "Original PILOT Agreement"), with respect to the Existing Facility; and

WHEREAS, in 2013, the Company further requested the Agency's assistance with a certain project (the "2013 Project") consisting of a partial real property tax abatement under the terms of the Original PILOT Agreement for the following improvements located at or near or around, the Existing Facility: (i) a certain 100' x 400' steel building used as a transload facility for dry and bulk storage or large quantities of fracking sand; and (ii) a certain 30' x 225' steel building used as an engine barn with full-length locomotive storage track capable of storing two (2) locomotives (collectively, the "Improvements"; and, together with the Existing Facility, the "Facility"); and

WHEREAS, in connection with the 2013 Project, the Agency and the Company entered into (i) a certain first amendment to Lease Agreement (the "First Amendment to Lease Agreement"; and, together with the Original Lease Agreement, the "Lease Agreement"), (ii) a certain first amendment to Leaseback Agreement (the "First Amendment to Leaseback Agreement"; and, together with the Original Leaseback Agreement, the "Leaseback Agreement"), (iii) a certain first amendment to PILOT Agreement (the "First Amendment to PILOT Agreement"; and, together with the Original PILOT Agreement, the "PILOT Agreement"), and (iv) related documents; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) an eight (8) year extension of the PILOT Agreement and (ii) the retention by the Agency of a leasehold or other interest in the Facility, all for the purpose of providing the Company with a real property tax abatement with respect to the Facility (the "Financial Assistance"); and

WHEREAS, by resolution adopted by the Agency on May 28, 2020 (the "Inducement Resolution"), the Agency accepted the Application as submitted by the Company and, among other things, (i) described the Financial Assistance being contemplated by the Agency and (ii) authorized the Agency to hold a public hearing regarding the contemplated Financial Assistance; and

WHEREAS, pursuant to Section 859-a of the Act and pursuant to Executive Orders issued by Governor Andrew M. Cuomo, on Friday, June 19, 2020, at 11:00 a.m., local time, the Agency held a virtual public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally – by teleconference – and in writing, to present their views. A copy of the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions at least ten (10) days prior to said Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at

6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to provide the Financial Assistance; and

WHEREAS, the Agency desires to adopt a resolution (i) acknowledging that the Public Hearing was held in compliance with the Act, (ii) authorizing the negotiation, execution and delivery by the Agency of a certain second amendment to Lease Agreement (the "Second Amendment to Lease Agreement"), a certain second amendment to Leaseback Agreement (the "Second Amendment to Leaseback Agreement"), a certain second amendment to PILOT Agreement (the "Second Amendment to PILOT Agreement") and related documents, all for the purpose of providing the Company with a an eight (8) year extension of the PILOT Agreement, and (iii) authorizing the Financial Assistance to the Company; and

WHEREAS, the Second Amendment to Lease Agreement, the Second Amendment to Leaseback Agreement and Second Amendment to PILOT Agreement and related documents have been negotiated and will be presented to the Chairman, the Vice Chairman and/or the Executive Director of the Agency this meeting for execution subject to approval of these resolutions.

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

Section 1. The virtual Public Hearing held by the Agency Friday, June 19, 2020, at 11:00 a.m., concerning the Project and the Financial Assistance was duly held in accordance with the Act and pursuant to Executive Orders issued by Governor Andrew M. Cuomo,, including but not limited to the giving of at least ten (10) days published notice of the Public Hearing (such notice also provided to the Chief Executive Officer of each affected tax jurisdiction), affording interested parties a reasonable opportunity, both orally – by teleconference – and in writing, to present their views with respect to the Project.

Section 2. The Agency finds that the proposed action and the providing of the Financial Assistance to the Company in connection with the Project constitutes a "Type II action" pursuant to 6 N.Y.C.R.R. Part 617.5 and therefore is exempt from review under SEQRA.

Section 3. The Agency is hereby authorized to provide to the Company certain Financial Assistance in the form of an eight (8) year extension of the PILOT Agreement.

Section 4. The Chairman, the Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Second Amendment to Lease Agreement, the Second Amendment to Leaseback Agreement and the Second Amendment to PILOT Agreement and related documents; provided (i) the rental payments under the Leaseback Agreement, as amended by the Second Amendment to Leaseback Agreement, include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of PILOT Agreement, as

amended by the Second Amendment to PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 5. 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 6. 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:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Michael L. Nisbet	[✓]	[]	[]	[]
Scott Van Etten	[✓]	[]	[]	[]
Anthony Russo	[✓]	[]	[]	[]
Dean Strobel	[✓]	[]	[]	[]
Michael J. Doyle	[✓]	[]	[]	[]
Christine G. Sharkey	[✓]	[]	[]	[]
Mark R. Alger	[✓]	[]	[]	[]

The Resolutions were thereupon duly adopted.

SECRETARY'S CERTIFICATION
(B&H Railcorp. Project)

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

I, the undersigned, Secretary, of the Steuben County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Steuben County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on June 25, 2020, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this 25th day of June, 2020.


Secretary

EXHIBIT A

[Notice Documents Relating to Agency's Public Hearing on June 19, 2020]