

**FINAL RESOLUTION**  
(Walgreen Eastern Co., Inc. - Project Nucleus)

A regular meeting of the Orange County Industrial Development Agency held on February 16, 2022 at 5:30 p.m. (local time) at the Orange County Government Center Community Room, 255 Main Street, Goshen, New York.

The meeting was called to order by Torelli and upon the roll being duly called, the following members were:

**MEMBERS PRESENT** (in person or via Tele/Videoconference in accordance with the Governor's Executive Order 202.1): Michael Torelli, Vincent Odock, Robert Kennedy III, Noel Spencer, Dean Tamburri, Susan Walski

**THE FOLLOWING PERSONS WERE ALSO PRESENT** (in person or via Tele/Videoconference in accordance with the Governor's Executive Order 202.1): Bill Fioravanti, Susan Katzoff, Esq., Steven Maier, Esq., Shannon Mannese, Dennis Brady, Steve McClure, Kristin Kurylak, Dan Spitzer

The following Resolution was offered by Torelli and seconded by Odock:

**RESOLUTION AUTHORIZING THE ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY TO: (I) UNDERTAKE, ACQUIRE, RENOVATE, EQUIP AND COMPLETE A PROJECT; (II) APPOINT THE COMPANY AS ITS AGENT TO UNDERTAKE THE PROJECT (AS MORE FULLY DESCRIBED BELOW); (III) PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF EXEMPTIONS FROM STATE AND LOCAL SALES AND USE TAX; AND (IV) EXECUTE AND DELIVER CERTAIN DOCUMENTS IN CONJUNCTION WITH THE PROJECT**

**WHEREAS**, by Title I of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 390 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "**Act**"), the **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (hereinafter called 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**, Walgreen Eastern Co., Inc., a New York corporation for itself or on behalf of an entity to be formed (collectively, the "**Company**"), has submitted an application (the "**Application**") to the Agency requesting the Agency's assistance with respect to a certain project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold or license interest in approximately 215,000 sq. ft. of improvements (to be constructed) on land located at or about 1396 Route 300, Newburgh, NY (Tax Map No. 60-3-49.22) (the "**Land**"); (ii) use of approximately 105,000 sq. ft. of the newly constructed building for a micro-fulfillment facility and medical and drug mini-warehouse to provide for automated medicinal distribution (the "**Facility**"); (iii) the

acquisition and installation in and on the Facility of furniture, fixtures and equipment, (the "**Equipment**") and together with the Land and the Facility, the "**Project Facility**"; (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax (collectively, the "**Financial Assistance**"; (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, equipping and completion of the Project Facility; and (D) the acquisition of an interest in the Land and Facility by the Agency pursuant to a sublease or license agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement, as necessary; and

**WHEREAS**, pursuant to General Municipal Law Section 859-a, on February 14, 2022, at 2:30 p.m. (local time), the Agency held a public hearing electronically via Zoom 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 and in writing, to present their views. Notice of the public hearing was published on February 1, 2022, in the Times Herald-Record, a newspaper of general circulation in Orange County, New York and given to the chief executive officers of the affected tax jurisdictions by letters dated January 31, 2022. A copy of the minutes of the Public Hearing along with the Notice of Public Hearing have been provided to the members and are on file with the Agency; and

**WHEREAS**, pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as "**SEQRA**"), the Agency is required to make a determination whether the "action" (as said quoted term is defined in SEQRA) to be taken by the Agency may have a "significant impact on the environment" (as said quoted term is utilized in SEQRA), and the agreement of the Agency to undertake the Project constitutes such an action; and

**WHEREAS**, by resolution adopted February 16, 2022 (the "**SEQRA Resolution**") the Agency acting as "lead agency" (as such quoted term is defined under SEQRA), classified the Project as an "Unlisted" action (as such quoted term is defined under SEQRA), conducted an uncoordinated review of the Project and issued a "negative declaration" (as such quoted term is defined under SEQRA) with respect to the Project; and

**WHEREAS**, the Agency has given due consideration to the Application and to representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in Orange County (the "**County**"; (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of New York State (the "**State**") to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and to the extent occupants are relocating from one plant or facility to another, based upon the Company's application and representations, the Agency hereby finds that the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and (iii) the Project

will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and the County and improve their standard of living; and

**WHEREAS**, subject to compliance with the terms hereof and the execution and delivery of the Lease Documents (as defined hereinbelow) by the Company, the Agency will: (i) designate the Company as its agent for the purpose of acquiring, renovating, equipping and completing the Project pursuant to a project agreement (the "**Project Agreement**"); (ii) acquire a leasehold interest in the Project through the negotiation, execution and delivery of a lease agreement (the "**Lease Agreement**"), a leaseback agreement (the "**Leaseback Agreement**"), a bill of sale (the "**Bill of Sale**"), an environmental compliance and indemnification agreement (the "**Environmental Compliance and Indemnification Agreement**") and all other documents and certificates required by the Agency to confer the approved Financial Assistance, each of the foregoing with the Company (the "**Miscellaneous Documents**" and together with the Project Agreement, the Lease Agreement, the Leaseback Agreement, the Bill of Sale and the Environmental Compliance and Indemnification Agreement, collectively, the "**Lease Documents**"); (iii) provide the Financial Assistance to the Company in the form of State and local sales and use tax exemption for purchases and rentals related to the acquisition, renovating, equipping and completion of the Project; and

**WHEREAS**, the Lease Documents and related documents will be negotiated and presented to the Agency for execution and delivery subject to the approval of these resolutions.

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

**SECTION 1.** The Company presented the Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Application, at the public hearing and in other correspondence and/or documents, if any, submitted by the Company to the Agency, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers and authority necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act and to take the actions contemplated herein; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, renovating, equipping and completing the Project and to grant the Financial Assistance; and

(C) The action to be taken by the Agency will induce the Company to develop and operate the Project in the County, thereby increasing employment opportunities in the County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(D) The Project will not result in the removal of a commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State;

and the Agency hereby finds that, based on the Company's application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(E) The Project Facility constitutes a "project" within the meaning of the Act.

**SECTION 2.** The Chairman, Vice Chairman, Chief Executive Officer and/or the Chief Operating Officer of the Agency, acting individually, are each hereby authorized and directed, on behalf of the Agency, to negotiate and execute (the Lease Documents, in form and substance similar to other such agreements and documents used by the Agency for similar transactions, with changes in terms and form as shall be consistent with this Resolution and as the Chairman, Vice Chairman Chief Executive Officer and/or the Chief Operating Officer shall approve; provided, however, the rental payments under the 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 (D) and execute and deliver any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein, as approved by the Chairman, Vice Chairman Chief Executive Officer and/or the Chief Operating Officer, and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution.

**SECTION 3.** Subject to the Company's execution, delivery and compliance of and with the Lease Documents (unless otherwise authorized by the Agency), the Agency hereby authorizes the Company to proceed with the acquisition, renovation and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, renovate and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to a project operator, agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses (collectively, "***Additional Agents***") in accordance with the Lease Documents; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; provided, however, the Company execute and deliver all Lease Documents and remit all amounts due thereunder to the Agency or its designees by February 16, 2023 (unless extended for good cause by the Agency).

**SECTION 4.** Based upon representations and warranties made by the Company in the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project, that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$24,000,000**, which result in New York State and local sales and use tax exemption benefits ("***Sales and Use Tax Exemption Benefits***") not to exceed **\$1,950,000**.

**SECTION 5.** Pursuant to Section 875(3) of the New York General Municipal Law and the Agency's policies, which are all incorporated herein by reference, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any State and local Sales and Use Tax Exemption Benefits or other Financial Assistance in violation of the Act or the Agency's policies or in the event of a default under the Lease Documents. As a condition precedent of receiving Sales and Use Tax Exemption Benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, shall (i) cooperate with the Agency in its efforts to recover or recapture any Sales and Use Tax Exemption Benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands; and with respect to all other Financial Assistance the Company shall agree to cooperate with the Agency in its efforts to recover or recapture any Financial Assistance in the event of a Default; and promptly pay over any such amounts to the Agency that the Agency demands.

**SECTION 6.** The Company shall provide, or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the State Commissioner of Taxation and Finance (the "**Commissioner**") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request. for purposes of exemption from New York State (the "**State**") sales and use taxation as part of the Financial Assistance requested, "sales and use taxation" shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**SECTION 7.** The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Company's execution and delivery of the Lease Documents, all other documents set forth herein and the payment by the Company of all administrative, legal and other fees of the Agency.

**SECTION 8.** No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**SECTION 9.** Should the Agency's participation in the Project, or the appointments made in accordance herewith, be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees

from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

**SECTION 10.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

**SECTION 11.** The Secretary, the Chief Executive Officer and/or the Chief Operating Officer of the Agency are hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

**SECTION 12.** The approvals provided for herein are contingent upon the Company's payment of all the Agency's fees and costs, including but not limited to attorney's fees.

**SECTION 13.** These Resolutions 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:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Michael Torelli	✓			
Vincent Odoak	✓			
Dean Tamburri	✓			
Robert Kennedy III	✓			
Noel Spencer	✓			
Susan Walski	✓			

The Resolutions were thereupon duly adopted.

James Rinaldi

✓

STATE OF NEW YORK    )  
COUNTY OF ORANGE    ) ss:

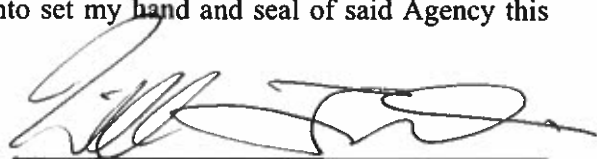
I, the undersigned Chief Executive Officer of the Orange County Industrial Development Agency, **DO HEREBY CERTIFY**:

That I have compared the foregoing extract of the minutes of the meeting of the Orange County Industrial Development Agency (the "*Agency*") including the resolution contained therein, held on February 16, 2022, 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 relates to the subject matters therein referred to.

**I FURTHER CERTIFY** that: (i) all members of the Agency had due notice of such meeting; (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 ("*EO 202.1*"), as amended and extended from time to time, such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (iii) the meeting was in all respects duly held; and 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.

16<sup>th</sup> IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Agency this day of February, 2022.



William Fioravanti, Chief Executive Officer

(S E A L)