

VIP TRUE NORTH, LLC

**APPROVING RESOLUTION
(3101-18-08A)**

A special meeting of the Onondaga County Industrial Development Agency (the "Agency") was convened in public session on February 22, 2019, at 9:00 a.m. at 333 West Washington Street, Syracuse, New York.

The meeting was called to order by the (Vice) Chairman of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT: Patrick Hogan
Janice Herzog
Susan Stanczyk
Fanny Villarreal

ABSENT: Victor Ianno
Kevin Ryan
Steve Morgan

ALSO PRESENT: Robert M. Petrovich, Interim Executive Director
Anthony P. Rivizzigno, Esq., Agency Counsel

The following resolution was offered by Janice Herzog, seconded by Fanny Villarreal, to wit:

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN
CONNECTION WITH A LEASE/LEASEBACK TRANSACTION FOR A
PROJECT FOR VIP TRUE NORTH, LLC (THE "COMPANY").**

WHEREAS, Onondaga County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 435 of the Laws of 1970 of the State of New York and Chapter 676 of the Laws of 1975, as amended, constituting Section 895 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, VIP True North, LLC, a New York limited liability company (the “Company”), has submitted an application (the “Application”), on behalf of itself and entities formed or to be formed on its behalf, to the Agency, a copy of which Application is on file at the office of the Agency, which Application requests that the Agency consider undertaking a project (the “Project”) for the benefit of the Company and/or entities formed or to be formed on its behalf, said Project consisting of the following: (A)(1) acquisition of an interest in an approximately 4.89 acre parcel of land located on Morgan Road (tax map no. 070.-01-07.2) in the Town of Clay, Onondaga County, New York (the “Land”); (2) the construction of an approximately 15,000 square foot building (the “Facility”) located on the Land; and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”), such Project Facility to provide full service, licensed child care and early childhood education; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on October 9, 2018 (the “Public Hearing Resolution”), the Agency authorized a public hearing with respect to the Project to be held pursuant to Section 859-a of the Act; and

WHEREAS, in compliance with the provisions of Section 859-a of the Act, the Public Hearing Resolution indicated that the undertakings of the Agency contained therein are contingent upon the Agency making a determination to proceed with the Project following compliance by the Agency with the public notice and public hearing requirements set forth in Section 859-a of the Act; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed on October 10, 2018 to the chief executive officers of the county and of each city, town, village and school district in which the Project Facility is located, (B) caused notice of the Public Hearing to be published on October 11, 2018 in The Post-Standard, a newspaper of general circulation available to the residents of the Town of Clay, Onondaga County, New York, (C) conducted the Public Hearing on October 31, 2018 at 9:00 a.m., local time at the Town Hall of the Town of Clay located at 4401 Route 31, Clay, Onondaga County, New York, and (D) prepared a report of the Public Hearing (the “Public Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Public Hearing Report to be made available to the members of 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 Project had been subject to an environmental review resulting in the issuance of a Negative Declaration by the Agency by resolution dated February 22, 2019; and

WHEREAS, the Agency has given due consideration to the Application, and to representations by the Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in Onondaga County, New York and (B) the completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York; and

WHEREAS, the Agency desires to encourage the Company to preserve and advance the job opportunities, health, general prosperity and economic welfare of the people of Onondaga County, New York by undertaking the Project in Onondaga County, New York; and

WHEREAS, the Agency (A) has determined that the Project constitutes a "commercial project" within the meaning of the Act, (B) has found that although the Project Facility predominant purpose is to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the Town of Clay, (C) has determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by increasing the overall number of permanent, private sector jobs in the State of New York and (D) has determined that the Agency will proceed with the Project and the granting of the Financial Assistance; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents (hereinafter collectively referred to as the "Agency Documents"): (A) an underlying lease agreement (and a memorandum thereof) (the "Underlying Lease") dated as of March 1, 2019 by and between the Company and the Agency, pursuant to which, among other things, the Agency will acquire a leasehold interest in the Project Facility now or hereafter located on the Land from the Company; (B) a lease agreement (and a memorandum thereof) (the "Lease Agreement") dated as of March 1, 2019 by and between the Agency and the Company, pursuant to which, among other things, the Company will agree to undertake and complete the Project as agent of the Agency and the Company will further agree to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency's administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (C) a project agreement (the "Project Agreement") dated as of March 1, 2019 that complies with the requirements of Section 859-a(6) of the Act; (D) a New York State Department of Taxation and Finance form entitled "IDA Appointment of Project Operator or Agency for Sales Tax Purposes" (the form required to be filed pursuant to Section 874(9) of the Act) (the "Thirty-Day Sales Tax Report") and any additional report to the Commissioner of the State Department of Taxation and Finance concerning the amount of sales tax exemption benefit for the Project (the "Additional Thirty-Day Project Report"); (E) if the Company intends to finance the Project with borrowed money, a mortgage and any other security documents and related documents (collectively, the

"Mortgage") from the Agency and the Company to the Company's lender with respect to the Project (the "Lender"), which Mortgage will grant a lien on and security interest in the Project Facility to secure a loan from the Lender to the Company with respect to the Project (the "Loan"); and (F) various certificates relating to the Project (the "Closing Documents"); and

WHEREAS, simultaneously with the execution and delivery of the Agency Documents, the Agency will file with the State Department of Taxation and Finance the Thirty-Day Sales Tax Report and provide a copy of the Thirty-Day Sales Tax Report to the Company; and

WHEREAS, 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 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.

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

Section 1. The Agency, based upon the representations made by the Company to the Agency in the Application, hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers 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;

(B) The Project constitutes a "project," as such term is defined in the Act;

(C) The Project site is located entirely within the boundaries of Onondaga County, New York;

(D) It is estimated at the present time that the costs of the planning, acquisition, development, construction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$3,666,000;

(E) The completion of the Project will not result in the removal of a plant or facility of any proposed occupant of the Project Facility from one area of the State of New York to another area in the State of New York and will not result in the abandonment of one or more plants or facilities of any occupant of the Project Facility located in the State of New York;

(F) (1) The Project constitutes a project where the predominant purpose is to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the Town of Clay; (2) the Agency is authorized to provide Financial Assistance in respect of the Project pursuant to Section 862(2)(b) of the Act; provided however, that no Financial Assistance shall be provided to the Project by the Agency until the applicable provisions of Section 862(2)(c) of the Act have been complied with.

(G) The acquisition, development, construction and installation of the Project Facility and the leasing of the Project Facility to the Company is reasonably necessary to induce the Company to maintain and expand its business operations in the State of New York; and

(H) Based upon representations of the Company and counsel to the Company, the Project Facility conforms with the local zoning laws and planning regulations of Onondaga County and all regional and local land use plans for the area in which the Project Facility is located; and

(I) The granting of the Financial Assistance by the Agency with respect to the Project will promote and maintain the job opportunities, general prosperity and economic welfare of the citizens of Onondaga County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act;

(J) The Agency has reviewed the Public Hearing Report and has fully considered all comments contained therein;

(K) The Project should receive the Financial Assistance in the form of exemptions from certain sales and use taxes and mortgage recording taxes based on the description of expected public benefits to occur as a result of this Project, as described in the Application and failure by the Company to meet the expected public benefits will result in a recapture event, as described in the Lease Agreement; and

(L) It is desirable and in the public interest for the Agency to enter into the Agency Documents.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire a leasehold interest in the Land and all improvements now or hereafter located on the Land from the Company pursuant to Underlying Lease; (C) lease the Project Facility to the Company pursuant to the Lease Agreement; (D) acquire, construct and equip the Project Facility, or cause the Project Facility to be acquired, constructed and equipped, as provided in the Lease Agreement and the Project Agreement; and (E) grant to the Company the Financial Assistance with respect to the Project.

Section 3. The Agency is hereby authorized to acquire, construct and equip the Project Facility as described in the Agency Documents, to appoint the Company as agent of the Agency to undertake and acquisition, construction and equipping of the Project Facility as described in the Agency Documents, and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and equipping are hereby ratified, confirmed and approved.

Section 4. The Chairman (or Vice Chairman) and the Executive Director of the Agency, with the assistance of Agency Counsel, are authorized to negotiate and approve the form and substance of the Agency Documents.

Section 5. (A) The Chairman (or Vice Chairman) and the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same, all in the forms thereof as the Chairman (or Vice Chairman) and the Executive Director shall approve, the execution thereof by the Chairman (or Vice Chairman) and the Executive Director to constitute conclusive evidence of such approval.

(B) The Chairman (or Vice Chairman) and the Executive Director of the Agency are hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 6. The Agency shall maintain records of the amount of State and local sales and use tax exemption benefits provided to the Project and each agent or Project operator and shall 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'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 agents and/or operators to make, all records and information regarding State and local sales and use tax exemption benefits available to the Agency upon request. The provisions of Section 875 of the Act are hereby incorporated herein as if set forth herein and the Agency agrees that it shall comply with the requirements of such Section 875.

Section 7. The Agency hereby delegates to the Company, as agent of the Agency, the authority to designate (following the execution and delivery of the Agency Documents), agents and sub-agents of the Agency (each, a "Sub-Agent") for purposes of utilizing the Agency sales and use tax exemption with respect to the, renovation, construction and equipping of the Project Facility; provided that any such sub-agency designation shall become effective only upon submission to the Agency within fifteen (15) days of such agency and sub-agency designation: (1) an executed sub-agent appointment agreement (in a form approved by the Agency) and (2) a completed Form ST-60 of the New York State Department of Taxation and Finance (IDA Appointment of Project Sublessee or Agent for Sales Tax Purposes). Such agents and sub-agents may include contractors and subcontractors involved in the acquisition, construction and installation of the Project Facility.

Section 8. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company and/or any Sub-Agent shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits. Notwithstanding anything herein to the contrary, the amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$131,280 and shall last no longer than two years from the execution and delivery of the Closing Documents.**

Section 9. Notwithstanding anything herein to the contrary, the amount of mortgage recording tax exemption benefits comprising the Financial Assistance approved herein shall be for a mortgage or mortgages in an aggregate amount not to exceed **\$3,035,000.**

Section 10. 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 or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional 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 Resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 11. This Resolution shall take effect immediately upon adoption.

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

	AYE	NAY	ABSENT
Patrick Hogan	X		
Janice Herzog	X		
Victor Ianno			X
Steve Morgan			X
Susan Stanczyk	X		
Kevin Ryan			X
Fanny Villarreal	X		

The Resolution was thereupon declared duly adopted.

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

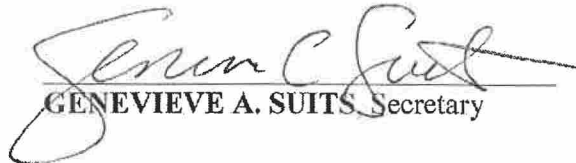
I, the undersigned Secretary of the Onondaga County Industrial Development Agency, DO HEREBY CERTIFY that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on February 22, 2019, with the original thereof on file in my office, and that the same is a true and correct copy of such proceedings of the Agency and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matter therein referred to.

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

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of February, 2019.

(SEAL)


GENEVIEVE A. SUITS Secretary

PRELIMINARY AGREEMENT

THIS PRELIMINARY AGREEMENT dated as of May 13, 2019 is between the ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation organized and existing under the laws of the State of New York, VIP TRUE NORTH, LLC, a limited liability company organized and existing under the laws of the State of New York (the "Company").

WITNESSETH:

WHEREAS, Onondaga County Industrial Development Agency is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 435 of the Laws of 1970 of the State of New York and Chapter 676 of the Laws of 1975 of the State of New York, as amended, constituting Section 895 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the purposes of the Act are to promote industry and develop trade and thereby advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of Onondaga County, New York and the State of New York, to improve their prosperity and standard of living and to prevent unemployment and economic deterioration; and

WHEREAS, by resolution adopted by the members of the Agency on February 22, 2019, (the "Approving Resolution"), the Agency determined to undertake a project (the "Project") on behalf of the Company and/or entities formed or to be formed on behalf of the foregoing, consisting of the following: (A)(1) acquisition of an interest in an approximately 4.89 acre parcel of land located on Morgan Road (tax map no. 070.-01-07.2) in the Town of Clay, Onondaga County, New York (the "Land"); (2) the construction of an approximately 15,000 square foot building (the "Facility") located on the Land; and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property (collectively, the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"), such Project Facility to provide full service, licensed child care and early childhood education; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real estate transfer taxes and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, the Company will be the initial operator and the owner of the Land and the Facility, and upon substantial completion, the Project Facility will be sold to CMF True North Real Property, LLC which will act as permeant operator of the Project Facility.

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

Article 1. Representations.

Among the representations which have resulted in the execution of this Preliminary Agreement are the following:

Section 1.01. The Company hereby represents to the Agency that:

(A) The completion of the Project Facility will not result in the removal of a plant or facility of the Company or any other proposed occupant of the Project from one area of the State of New York to another area of the State of New York or in the abandonment of a plant or facility of the Company or of any proposed occupant of the Project located in the State of New York.

(B) The Project constitutes a project where the predominant purpose is to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the Town of Clay; (2) the Agency is authorized to provide Financial Assistance in respect of the Project pursuant to Section 862(2)(b) of the Act; provided however, that no Financial Assistance shall be provided to the Project by the Agency until the applicable provisions of Section 862(2)(c) of the Act have been complied with.

(C) The Project Facility is located entirely within the boundaries of Onondaga County, New York.

(D) The granting of the Financial Assistance by the Agency with respect to the Project will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of Onondaga County, New York and the State of New York and improve their standard of living, and thereby serve the public purposes of the Act and will encourage and assist the Company in providing the Project.

Article 2. Undertaking on the Part of the Agency.

Based upon the statements, representations and undertakings of the Company and subject to the conditions set forth herein, the undertakings on the part of the Agency are as follows:

Section 2.01. If the Company complies with all conditions set forth in this Preliminary Agreement, then the Agency will (A) undertake the Project, and (B) grant certain Financial Assistance with respect to the Project; PROVIDED HOWEVER, that the foregoing obligation of the Agency to undertake the Project and to grant the Financial Assistance relating to the Project

is subject to the conditions hereinafter contained in this Preliminary Agreement, including but not limited to the following conditions:

(A) An interest in the Project Facility shall be acquired by the Agency from the Company pursuant to one or more deeds, lease agreements, license agreements or other documentation to be negotiated between the Agency and the Company (hereinafter, collectively, the "Acquisition Agreement") which contains terms mutually acceptable to the Agency and the Company for the conveyance of an interest in the Project Facility to the Agency. The Acquisition Agreement and any other documents to be executed by the Agency and the Company in connection with the Project (collectively, the "Project Documents") shall in all respects comply with the requirements of, and limitations contained in, the Act;

(B) The Company shall have executed the Project Documents between the Agency and the Company, the terms of which shall be acceptable in form and content to the Agency and the Company and pursuant to which, among other things, the Company shall be obligated to pay all costs incurred by the Agency with respect to the Project and/or the Project Facility, including all costs of operation and maintenance of the Project, all taxes and other governmental charges, any required payments in lieu of taxes, and the reasonable fees and expenses incurred by the Agency with respect to or in connection with the Project and/or the Project Facility (including reasonable counsel fees and out-of-pocket expenses), it being understood that the Company will, prior to or contemporaneously with the granting of the Financial Assistance, enter into such Project Documents;

(C) No event shall have occurred which constitutes (or which after notice or lapse of time or both would constitute) an event of default under the Project Documents;

(D) The Agency shall receive, in form and substance satisfactory to the Agency, such rulings, approvals, resolutions, consents, certificates, opinions of counsel and other instruments and proceedings as shall be specified by the Agency in connection with the Financial Assistance, the Project and the Project Documents, such rulings, approvals, resolutions, consents, certificates, opinions of counsel and other instruments and proceedings to be obtained from transaction counsel, counsel to the Agency and such other governmental and nongovernmental agencies and entities as may have or assert competence or jurisdiction over or interest in matters pertaining thereto, and the same shall be in full force and effect at the time of the granting of the Financial Assistance; and

(E) Agreements shall be made as to (1) payments by the Company to or on behalf of the Agency of any required amounts in lieu of real property taxes, (2) indemnity by the Company of the Agency and the members and officers of the Agency, and (3) payment by the Company of the expenses incurred by the Agency in connection with the Project (including reasonable counsel fees and out-of-pocket expenses) and the administrative fee of the Agency, and such agreements shall be satisfactory in form and substance to the Agency.

(F) The Agency shall have made a discretionary determination to proceed with the granting of the Financial Assistance following determinations by the Agency that requirements

of SEQRA and the public hearing and notice requirements and other requirements of Section 859-a of the Act have been complied with.

(G) If any portion of the Financial Assistance to be granted by the Agency with respect to the Project is not consistent with the Agency's uniform tax exemption policy, the Agency must follow the procedures for deviation from such policy set forth in Section 874(b) of the Act prior to granting such portion of the Financial Assistance.

Section 2.02. The obligations of the Agency pursuant to this Preliminary Agreement are subject to the conditions elsewhere contained in this Preliminary Agreement.

Article 3. Undertakings on the Part of the Company.

Based upon the statements, representations and undertakings of the Agency and subject to the conditions set forth herein, the undertakings on the part of the Company are as follows:

Section 3.01. The Company will enter into the Project Documents with the Agency containing the terms and conditions described in Section 2.01 hereof.

Section 3.02. The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the use thereof or under this Preliminary Agreement, or (ii) liability arising from or expense incurred by the Agency's acquiring, constructing, renovating, equipping, installation, owning and leasing of the Project Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein and all causes of action and reasonable attorneys' fees (whether by reason of third party claims or by reason of the enforcement of any provision of this Preliminary Agreement (including, without limitation, this Section)) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, officers, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its members, directors, officers, agents, or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

Section 3.03. The Company will take such further action and adopt such further proceedings as may be required to implement the aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Article 4. General Provisions.

Section 4.01. All commitments of the Agency under Article 2 hereof are subject to the condition that the following events shall have occurred not later than one (1) year from the date hereof (or such other date as shall be mutually satisfactory to the Agency and the Company):

(A) The Agency and the Company shall have agreed on mutually acceptable terms and conditions of the Project Documents and any other agreements referred to in Articles 2 or 3 hereof;

(B) All necessary governmental approvals shall be obtained; and

(C) All other conditions expressed in this Preliminary Agreement shall have been satisfied.

Section 4.02. Subject to the terms and conditions of Section 4.03 hereof, the Company shall have the right to unilaterally cancel this Preliminary Agreement at any time on or before December 1, 2019 by written notice of cancellation delivered to the Agency at the address set forth in Section 4.04 hereof.

Section 4.03. If the events set forth in Section 4.01 hereof do not take place within the time set forth in said Section 4.01, or any extension thereof, or if the Company exercises its right of cancellation as set forth in Section 4.02 hereof, the Company agrees that (A) it will promptly reimburse the Agency (and its officers, members, agents or employees) for all reasonable and necessary actual out-of-pocket expenses (including reasonable legal fees and expenses) which the Agency (and its officers, members, agents or employees) may incur with respect to the execution of this Preliminary Agreement and the performance of its obligations hereunder; and (B) the obligations of the Company set forth in Section 3.02 hereof shall survive the termination of this Preliminary Agreement and shall remain in full force and effect until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters described therein may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency (and its officers, members, agents or employees) relating to the enforcement of the provisions therein stated.

Section 4.04. (A) All notices and other communications hereunder shall be in writing and shall be deemed given when mailed by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

(i) TO THE AGENCY:

Onondaga County Industrial Development Agency
333 W. Washington Street, Suite 130
Syracuse, New York 13202

WITH A COPY TO:

Anthony P. Rivizzigno, Esq.
Barclay Damon Tower
125 East Jefferson Street
Syracuse, New York 13202

(ii) IF TO THE COMPANY:

VIP True North, LLC
One Websters Landing
Syracuse, New York 13202
Attention: Charles C. Wallace III, Vice President

WITH A COPY TO:

Kevin Pole, Esq.
Bond, Schoeneck & King PLLC
One Lincoln Center
Syracuse, New York 13202

(B) The Agency, the Company may, by notice given hereunder, designate any other or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 4.05. All covenants and agreements herein contained by or on behalf of the Agency, the Company shall bind and inure to the benefit of the respective successors and assigns of the Agency, the Company whether so expressed or not provided, however, upon execution and delivery of the Project Documents, this Preliminary Agreements shall terminate.

Section 4.06. The obligations and agreements of the Agency contained herein shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent or employee of the Agency in his or her individual capacity, and the members, officers, agents and employees of the Agency shall not be liable personally hereon or be subject to any personal liability or accountability based upon or in respect hereof or of any action contemplated hereby. The obligations and agreements of the Agency contained herein shall not constitute or give rise to an obligation of the State of New York or of Onondaga County, New York and neither the

State of New York nor Onondaga County, New York shall be liable thereon, and further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease, sale or other disposition of the Project.


Section 4.07. Notwithstanding any provision of this Preliminary Agreement to the contrary, the Agency shall not be obligated to take any action pursuant to any provision hereof unless (A) the Agency shall have been requested to do so in writing by the Company; and (B) if compliance with such request is reasonably expected to result in the incurrence by the Agency (or any member, officer, agent or employee of the Agency) of any liability, fees, expenses or other costs, the Agency shall have received from the Company security or indemnity satisfactory to the Agency for protection against all such liability and for the reimbursement of all such fees, expenses and other costs.

IN WITNESS WHEREOF, the parties hereto have entered into this Preliminary Agreement as of the day and date first written above.

ONONDAGA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 
~~Chairman~~ Executive Director

VIP TRUE NORTH, LLC

By: 
By: managing member