

**MILTON REAL PROPERTIES OF MASSACHUSETTS, LLC &  
SOUTHWORTH-MILTON, INC., d/b/a MILTON CAT**

**APPROVING RESOLUTION  
(3101-20-22B)**

A regular meeting of the Onondaga County Industrial Development Agency (the "Agency") was convened in public session, remotely by conference call or similar service pursuant to New York State Executive Order 202.87 on January 12, 2021, at 8:00 a.m., local time.

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  
Steve Morgan  
Sue Stanczyk  
Kevin Ryan  
Victor Ianno  
Fanny Villarreal

**ABSENT:**

**ALSO PRESENT:** Robert M. Petrovich, Executive Director  
Jeffrey W. Davis, Esq., Agency Counsel  
Amanda M. Fitzgerald, Esq., Agency Counsel

The following resolution was offered by Susan Stanczyk, seconded by Kevin Ryan, to wit:

**RESOLUTION AUTHORIZING EXECUTION OF DOCUMENTS IN  
CONNECTION WITH ACQUISITION, CONSTRUCTION,  
INSTALLATION AND EQUIPPING OF A CERTAIN FACILITY FOR  
MILTON REAL PROPERTIES OF MASSACHUSETTS, LLC &  
SOUTHWORTH-MILTON, INC. d/b/a MILTON CAT**

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, 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 (the "State"), 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, pursuant to an application (the "Application") submitted to the Agency by Southworth-Milton, Inc. (the "Operating Company") and Milton Real Properties of Massachusetts, LLC (the "Real Estate Holding Company") on behalf of themselves and/or entities formed or to be formed on behalf of the foregoing, the Real Estate Holding Company and the Operating Company have requested that the Agency undertake a project (the "Project") for the benefit of the Operating Company and the Real Estate Holding Company and/or entities formed or to be formed on their behalf, said Project consisting of the following: (A)(1) the acquisition of a leasehold interest in approximately 19.74 acres of land located at 7285 and 7309 Eastman Road (tax map nos. 055.-03-01 and 055.-03-02) in the Town of Cicero, Onondaga County, New York (the "Land"), the construction of an approximately 75,000-85,000 square foot building (the "Facility") and the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property not part of the Equipment (as such term is defined herein) (collectively, the "Facility Equipment") (the Land, the Facility and the Facility Equipment being collectively referred to as the "Company Project Facility") which Company Project Facility is to be initially leased to, and subleased by, the Agency to the Operating Company, and (2) the acquisition and installation of certain equipment and personal property (the "Equipment", and together with the Company Project Facility, the "Project Facility"), all of the foregoing Project Facility to constitute a facility providing heavy equipment and power systems for the construction and business communities and a corporate headquarters; (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 and mortgage recording taxes (subject to certain statutory limitations) (the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency; and

WHEREAS, the Operating Company will initially own the Project and will transfer the Company Project Facility to the Real Estate Holding Company upon completion of the construction and installation of the Project and subsequently lease the Company Project Facility from the Real Estate Holding Company (the "Assignment and Lease Transaction"); and

WHEREAS, the Operating Company and/or the Real Estate Holding Company will sublease a portion of the Project Facility to SITECH Northeast, a related entity to the Operating Company, which will use the space in connection with its business of selling and supporting the technology and automation of the Operating Company's earthmoving business; and

WHEREAS, by resolution adopted by the members of the Agency on December 8, 2020 (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, 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 December 17, 2020 to the chief executive officers of the county and of each city, town, village and school district (collectively the "Affected Tax Jurisdictions") in which the Project Facility is located, (B) caused notice of the Public Hearing to be published on December 20, 2020 in The Post-Standard, a newspaper of general circulation available to the residents of the Town of Cicero, Onondaga County, New York, (C) conducted the Public Hearing on January 6, 2021 at 10:00 a.m., local time, held remotely by conference call or similar service pursuant to New York Governor Andrew Cuomo's Executive Order 202.1, as extended, 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, the Agency has given due consideration to the Application, and to representations by the Real Estate Holding Company and the Operating Company that (A) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Real Estate Holding Company and the Operating 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 to another area in the State and will not result in the abandonment of one or more plants or facilities of an occupant of the Project Facility located in the State; and

WHEREAS, the Agency desires to encourage the Real Estate Holding Company and the Operating 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, 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 determined that the Project is an Unlisted action as defined by SEQRA and issued a negative declaration with respect to the Project by resolution dated January 12, 2021; 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 contains facilities to be used primarily in making retail sales to customers who personally visit such facilities and such facilities constitute more than one-third of the total Project cost, the predominant purpose of the Project is to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the Town of Cicero, (C) has determined, following a review of the Public Hearing Report, that the Project would serve the public purposes of the Act by preserving and increasing the overall number of permanent, private sector jobs in the State, 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) a certain license agreement (the "License Agreement") by and between the Operating Company, as licensor, and the Agency, as licensee, pursuant to which the Operating Company will grant a license to the Agency to enter upon the Land for the purpose of undertaking and completing the Project and, in the event of any occurrence of an event of default under the Equipment Lease Agreements (as herein defined), for the purpose of pursuing its remedies under the Equipment Lease Agreements; (B) a certain equipment lease agreement (the "Facility Equipment Lease Agreement") by and between the Agency and the Operating Company pursuant to which the Operating Company agrees to undertake the Project as agent of the Agency and the Operating Company further agrees to lease the Facility Equipment 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) an equipment lease agreement (the "Equipment Lease Agreement" and, collectively with the Facility Equipment Lease Agreement, the "Equipment Lease Agreements") by and between the Agency and the Operating Company, pursuant to which the Operating Company will agree to lease the Equipment from the Agency; (D) a project agreement (the "Project Agreement") by and among the Agency, the Real Estate Holding Company and the Operating Company regarding the granting of the Financial Assistance and the potential recapture of such assistance that complies with the requirements of Section 859-a(6) of the Act; (E) one or more New York State Department of Taxation and Finance forms 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 and use tax exemption benefits for the Project (the "Additional Thirty-Day Project Report"); (F) a mortgage and any other security documents and related documents (collectively the "Mortgage") from the Agency, the Real Estate Holding Company and/or the Operating Company to a 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 Real Estate Holding Company or the Operating Company with respect to the Project (the "Loan"); and (G) various certificates relating to the Project (the "Closing Documents"); and WHEREAS, simultaneously with the execution and delivery of the License Agreement, the Operating Company will execute and deliver to the Agency one or more bills of sale to the Agency from the Operating Company to the Agency pursuant to which the Operating Company will sell to the Agency the Equipment; 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 the Additional Thirty-Day Sales Tax Report, if any, and provide a copy of the Thirty-Day Sales Tax Report and the Additional Thirty-Day Sales Tax Report, if any, to the Real Estate Holding Company and the Operating Company; and

WHEREAS, for purposes of exemption from 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; and

WHEREAS, pursuant to the Act, the Agency desires to adopt a resolution describing the Project and the Financial Assistance that the Agency is contemplating with respect to the Project.

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 Real Estate Holding Company and the Operating 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, development, construction and installation of the Project Facility (collectively, the "Project Costs") will be approximately \$26,000,000.00;

(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 to another area in the State 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;

(F) (1) Although the Project contains facilities that are primarily used in making retail sales to customers who personally visit such facilities, and such facilities will constitute more than one-third of the total Project cost, (x) 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 Cicero; and (y) undertaking the Project will serve the public purposes of the Act by preserving the overall number of permanent, private sector jobs in the State; and (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, construction and equipping of the Project Facility and the leasing of the Project Facility to the Operating Company is reasonably necessary to induce the Real Estate Holding Company and the Operating Company to maintain and expand its business operations in the State;

(H) Based upon representations of the Real Estate Holding Company, the Operating Company and their counsel, the Project Facility conforms with, or prior to the Agency entering into the Agency Documents, will conform 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;

(I) The Agency has assessed all material information included in connection with the Application necessary to afford a reasonable basis for the decision by the Agency to provide the Financial Assistance for the Project as described herein;

(J) 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 and improve their standard of living, and thereby serve the public purposes of the Act;

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

(L) The Project should receive the Financial Assistance in the form of exemptions from certain sales and use taxes, real estate transfer taxes and mortgage recording taxes (subject to statutory limitations) 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 Real Estate Holding Company and/or the Operating Company to meet the expected public benefits will result in a recapture event, as described in the Project Agreement;

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

(N) The Agency has prepared a written cost-benefit analysis identifying the extent to which the Project will create or retain permanent, private sector jobs, the estimated value of any tax exemption to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the Project in a timely fashion, and the extent to which the Project will provide additional sources of revenue for municipalities and school districts, and any other public benefits that might occur as a result of the Project; and

(O) The Real Estate Holding Company and the Operating Company have provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act.

(P) It is desirable and in the public interest for the Agency to consent to the Assignment and Lease Transaction, subject to satisfaction of the conditions set forth in Section 4 hereof.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) accept the License to Agency; (B) lease the Facility Equipment to the Operating Company pursuant to the Facility Equipment Lease Agreement and lease the Equipment to the Operating Company pursuant to the Equipment Lease Agreement; (C) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, installed and constructed; (D) enter into the Project Agreement; (E) secure the Loan by entering into the Mortgage; and (F) grant 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 Real Estate Holding Company and the Operating Company as agents of the Agency to undertake such 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 Agency hereby consents to the Assignment and Lease Transaction and delegates to the Executive Director, in consultation with Barclay Damon LLP, as transaction counsel, to determine and approve the form and substance of any assignment documents (the "Assignment and Lease Documents").

Section 5. 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 and the Assignment and Lease Documents.

Section 6. (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 the Assignment and Lease 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 License Agreement).

Section 7. Notwithstanding anything herein to the contrary, the amount of State and the local sales and use tax exemption benefit comprising the Financial Assistance approved herein shall not exceed **\$1,040,000.00 and shall last no longer than two years from the execution and delivery of the Agency Documents.** The Agency may consider any requests by the Real Estate Holding Company and the Operating Company for increases to the amount of sales and use tax

exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services.

Section 8. Notwithstanding anything herein to the contrary, the amount of mortgage recording tax exemption benefit comprising the Financial Assistance approved herein shall not exceed **\$187,500.00**.

Section 9. 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 Real Estate Holding Company's and the Operating Company's receipt of, or benefit from, any State or local sales and use tax exemptions, the Real Estate Holding Company and the Operating Company must each acknowledge and agree to make, or cause each of 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 of the Act.

Section 10. The Agency hereby delegates to the Real Estate Holding Company and the Operating Company, as agents 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 acquisition, 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 Operator 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 11. The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Real Estate Holding Company and the Operating 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.

Section 12. As a condition precedent to the granting of the Financial Assistance, the Real Estate Holding Company and the Operating Company agree to execute an agreement with the Agency setting forth the preliminary undertakings of the Agency, the Real Estate Holding Company and the Operating Company with respect to the Project. The form and substance of the proposed agreement, a form of which was available to the members of the Agency (the "Agreement") are hereby approved. The Chairman (or Vice Chairman) and the Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, in substantially the same form as presented at this meeting with changes in terms and form as shall be consistent with this Resolution and as the Executive Director or (Vice) Chairperson shall approve.

The execution thereof by the Executive Director or (Vice) Chairperson shall constitute conclusive evidence of such approval.

Section 13. 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 the Assignment and Lease 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 and the Assignment and Lease Documents binding upon the Agency.

Section 13. 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:

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
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 January 12, 2021, 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"), as modified by New York State Executive Order 202.87, 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 12<sup>th</sup> day of January, 2021.

(SEAL)

  
Secretary

## PRELIMINARY AGREEMENT

THIS PRELIMINARY AGREEMENT dated as of January 12, 2021 among the ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a public benefit corporation organized and existing under the laws of the State of New York, MILTON REAL PROPERTIES OF MASSACHUSETTS, LLC (the "Real Estate Holding Company"), a limited liability company organized and existing under the laws of the State of New Hampshire and SOUTHWORTH-MILTON, INC. (the "Operating Company"), a corporation organized and existing under the laws of the State of New Hampshire.

### 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 1970 Laws of New York and Chapter 676 of the 1975 Laws 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 January 12, 2021 (the "Approving Resolution"), the Agency determined to undertake a project (the "Project") on behalf of the Real Estate Holding Company, the Operating Company and/or entities formed or to be formed or to be formed on behalf of the foregoing, consisting of the following: (A)(1) the acquisition of a leasehold interest in approximately 19.74 acres of land located at 7285 and 7309 Eastman Road (tax map nos. 055.-03-01 and 055.-03-02) in the Town of Cicero, Onondaga County, New York (the "Land"), the construction of an approximately 75,000-85,000 square foot building (the "Facility") and the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other tangible personal property not part of the Equipment (as such term is defined herein) (collectively, the "Facility Equipment") (the Land, the Facility and the Facility Equipment being collectively referred to as the "Company Project Facility") which Company Project Facility is to be initially leased to, and subleased by, the Agency to the Operating Company, and (2) the acquisition and installation of certain equipment and personal property (the "Equipment", and together with the Company Project Facility, the "Project Facility"), all of the foregoing Project Facility to constitute a facility providing heavy equipment and power systems for the construction and business communities and a corporate headquarters; (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 and mortgage recording taxes (subject to certain statutory limitations) (the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency and the lease (with an obligation to purchase) or sale of the Equipment to the Operating Company or such other person as may be designated by the Operating Company and agreed upon by the Agency; and

WHEREAS, the Operating Company will initially own the Project and will transfer the Company Project Facility to the Real Estate Holding Company upon completion of the construction and installation of the Project and subsequently lease the Company Project Facility from the Real Estate Holding Company; and

WHEREAS, the Operating Company and/or the Real Estate Holding Company will sublease a portion of the Project Facility to SITECH Northeast, a related entity to the Operating Company, which will use the space in connection with its business of selling and supporting the technology and automation of the Operating Company's earthmoving business; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Agency, the Real Estate Holding Company and the Operating 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 Real Estate Holding Company and the Operating Company hereby represent to the Agency that:

(A) The completion of the Project Facility will not result in the removal of a plant or facility of the Real Estate Holding Company, the Operating 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 Real Estate Holding Company, the Operating Company or of any proposed occupant of the Project located in the State of New York.

(B) Although the Project Facility contains facilities to be used primarily in making retail sales to customers who personally visit such facilities and such facilities constitute more than one-third of the total Project cost, (x) 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 Cicero; and (y) undertaking the Project will serve the public purposes of the Act by preserving the overall number of permanent, private sector jobs in the State; and (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 Real Estate Holding Company and the Operating Company in providing the Project.

Article 2. Undertaking on the Part of the Agency.

Based upon the statements, representations and undertakings of the Real Estate Holding Company and the Operating 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 Real Estate Holding Company and the Operating Company comply 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 Real Estate Holding Company and/or the Operating Company pursuant to one or more deeds, lease agreements, license agreements, bills of sale or other documentation to be negotiated between the Agency and the Real Estate Holding Company and the Operating Company (hereinafter, collectively, the "Acquisition Agreement") which contains terms mutually acceptable to the Agency, the Real Estate Holding Company and the Operating 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, the Real Estate Holding Company and the Operating 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 Real Estate Holding Company and the Operating Company shall have executed the Project Documents among the Agency, the Real Estate Holding Company and the Operating Company the terms of which shall be acceptable in form and content to the Agency, Real Estate Holding Company and the Operating Company and pursuant to which, among other things, the Real Estate Holding Company and the Operating 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 Real Estate Holding Company and the Operating 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) indemnity by the Real Estate Holding Company and the Operating Company of the Agency and the members and officers of the Agency, and (2) payment by the Real Estate Holding Company and the Operating 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.

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 Real Estate Holding Company and the Operating 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 Real Estate Holding Company and the Operating Company are as follows:

Section 3.01. The Real Estate Holding Company and the Operating 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 Real Estate Holding Company and the Operating Company agree that the Agency, its directors, members, officers, agents (except the Real Estate Holding Company and the Operating Company) and employees shall not be liable for and agree to defend, indemnify, release and hold the Agency, its director, members, officers, agents (except the Real Estate Holding Company and the Operating 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 Real Estate Holding Company and/or the Operating 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 Real Estate Holding Company and the Operating 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 Real Estate Holding Company and the Operating 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 six (6) months from the date hereof (or such other date as shall be mutually satisfactory to the Agency, the Real Estate Holding Company and the Operating Company):

(A) The Agency, the Real Estate Holding Company and the Operating 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 Real Estate Holding Company and the Operating Company shall have the right to unilaterally cancel this Preliminary Agreement at any time on or before August 31, 2021 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 Real Estate Holding Company and the Operating Company exercise their right of cancellation as set forth in Section 4.02 hereof, the Real Estate Holding Company and the Operating Company jointly and severally agree that (A) they 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 Real Estate Holding Company and the Operating 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:

Jeffrey W. Davis, Esq.  
Barclay Damon Tower  
125 East Jefferson Street  
Syracuse, New York 13202

(ii) IF TO THE REAL ESTATE HOLDING COMPANY:

Milton Real Properties of Massachusetts, LLC  
100 Quarry Drive  
Milford, Massachusetts 01757  
Attn: Bradlee T. Farrin, Corporate Facilities Manager

WITH A COPY TO:

Harris Beach, PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207  
Attention: Jeremy H. Speich, Esq.

(iii) IF TO THE OPERATING COMPANY:

Southworth-Milton, Inc. d/b/a Milton CAT  
100 Quarry Drive  
Milford, Massachusetts 01757  
Attn: Bradlee T. Farrin, Corporate Facilities Manager

WITH A COPY TO:

Harris Beach, PLLC  
677 Broadway, Suite 1101  
Albany, New York 12207  
Attention: Jeremy H. Speich, Esq.

(B) The Agency, Real Estate Holding Company and the Operating 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 Real Estate Holding Company and the Operating Company shall bind and inure to the benefit of the respective successors and assigns of the Agency, the Real Estate Holding Company and the Operating Company whether so expressed or not provided, however, upon execution and delivery of the Project Documents, this Preliminary Agreement 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 Real Estate Holding Company and the Operating 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 Real Estate Holding Company and/or the Operating 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.


Section 4.08. All obligations of the Real Estate Holding Company and the Operating Company under this Preliminary Agreement shall be the joint and several obligations of Milton Real Properties of Massachusetts, LLC and Southworth-Milton, Inc. d/b/a Milton CAT.

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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:   
Robert M. Petrovich, Executive Director

Signature Page to Preliminary Agreement  
Page 1 of 3

MILTON REAL PROPERTIES OF  
MASSACHUSETTS, LLC

By: \_\_\_\_\_  
Name:  
Title:

SOUTHWORTH-MILTON, INC.  
D/B/A MILTON CAT

By: \_\_\_\_\_  
Name:  
Title: