

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
INDUCEMENT RESOLUTION**

**791 WASHINGTON STREET, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S),
SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS
BEHALF**

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, January 26, 2022 at 12:00 p.m.

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

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF 791 WASHINGTON STREET, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, THE “COMPANY”) IN CONNECTION WITH A CERTAIN PROJECT DESCRIBED BELOW; (ii) RATIFYING THE SCHEDULING, NOTICING, AND CONDUCTING OF A PUBLIC HEARING IN CONNECTION WITH THE PROJECT; (iii) MAKING A DETERMINATION PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (v) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, AND (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 293 of the Laws of 1970 of the State of New York, as amended (collectively, the “Act”), the ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (the “Agency”) was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping civic, industrial, manufacturing, commercial and other facilities as authorized by the Act; and

WHEREAS, the Company has submitted an application to the Agency (the “Application”) requesting the Agency’s assistance with a certain project (the “Project”) consisting of: (i) a leasehold interest in a 2+/- acre parcel of land located at 791 Washington Street, City of Buffalo, Erie County, New York (the "Land") improved thereon with the

479,475+/- SF historic Trico Building (the "Existing Improvements"); (ii) the partial demolition, construction, reconstruction and/or renovation, upgrading and equipping of the Existing Improvements on the Land to accommodate a mixed-use structure for approximately 60,000+/- SF of commercial space available for companies seeking to be located in the Buffalo Niagara Medical Campus as well as offering 243 units consisting of studio, 1-bedroom, 2-bedroom and 3-bedroom apartments with 90% market-rate and 10% workforce housing (at 80% AMI) to meet the expanding demand as well as on-site parking amenities (the "Improvements"), and (iii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property (the "Equipment," and collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, pursuant to General Municipal Law Section 859-a, on December 28, 2021, at 10:00 a.m., at the Agency's offices, at 95 Perry Street, Suite 403, Buffalo, NY 14203, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance (as hereinafter defined) 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; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of undertaking the Project pursuant to an Agent and Financial Assistance Project Agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement") and related leaseback agreement (the "Leaseback Agreement") with the Company, pursuant to which the Agency will retain a leasehold interest in the Land, the Existing Improvements, the Improvements, the Equipment and personal property constituting the Facility; and (iii) provide Financial Assistance to the Company in the form of (a) an exemption benefit from all New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction, reconstruction and/or renovation, rehabilitation or equipping of the Facility, and (b) a mortgage recording tax exemption benefit for the financing related to the Project, (collectively, the sales and use tax exemption benefit and the mortgage recording tax exemption benefit, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, the City of Buffalo Planning Board (the "Planning Board") in accordance with Article 8 of the New York Environmental Conservation Law and the regulations promulgated thereto in 6 N.Y.C.R.R. Part 617 (collectively referred to as the "State Environmental Quality Review Act" and/or "SEQR") undertook coordinated review with respect to the Project, established itself as Lead Agency as defined in SEQR, and determined that the Project was a "Type I" action; and

WHEREAS, the Agency did not object to the Planning Board's request to be Lead Agency, as defined under SEQR; and

WHEREAS, on September 8, 2015, the Planning Board issued a negative declaration ("Negative Declaration") under SEQR, with respect to the Project; and

WHEREAS, the Project as currently proposed herein has been revised since the Planning Board's issuance of the Negative Declaration (revisions eliminated a limited hotel use of the Facility and will now convert that contemplated hotel use square footage to additional apartment usage) and on June 24, 2021, the Planning Board determined that such revisions do not require reconsideration of the Negative Declaration; and

WHEREAS, pursuant to Article 18-A of 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 ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and any other correspondence submitted by the Company to the Agency, public hearing comments, if any, Agency Policy Committee review and recommendations of the Project and its January 26, 2022 resolution to approve the Project subject to the terms and conditions as described herein, the Policy Committee and Agency board member review of the Project's cost benefit ratio, the costs of incentives so applied for, the anticipated new tax revenues to be generated by the Project, as well as the Project's contemplated community benefits, and Agency board member review, discussion, and consideration of same, the Agency 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; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and/or renovating and equipping the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing and/or retaining employment opportunities in Erie County, New York and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a civic, commercial, industrial, or manufacturing plant of the Company or any other proposed occupant of the Project from one area of the State of New York (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, to the extent occupants are relocating from one plant or facility to another in another area of the

State, the Agency has complied with the Intermunicipal Movement procedures as required in the Countywide Industrial Development Agency Uniform Tax Exemption Policy; and

(F) 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 Financial Assistance for the Project as described herein; and

(G) 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

(H) The Company has provided a written statement confirming that the Project as of the date of the Application is in substantial compliance with all provisions the Act.

(I) The Project qualifies for Agency Financial Assistance as it is compliant with the Agency's Adaptive Reuse Project Policy as evidenced by the following:

- (i) the building(s) is/are approximately 100 years old and functional issues related to its age present challenges to its reuse;
- (ii) the building(s) has/have been vacant for at least the past ten (10) years;
- (iii) the building(s) is/are not generating any rental income;
- (iv) the Project is in compliance with the investment and growth criteria of the Framework for Regional Growth;
- (v) the Applicant has demonstrated evidence of financial obstacles to development of the Project without Agency or other public assistance;
- (vi) the Project has received the support of local governmental entities;
- (vii) the building(s) is/are located within a distressed census tract; and
- (viii) the structure requires significant costs to comply with building codes; and
- (ix) asbestos issues present a public safety hazard related to rehabilitation and redevelopment of the Project; and

(J) Based upon a thorough and complete review of the Application and its accompanying materials and information, the Environmental Assessment Form submitted by the Company, and the proceedings conducted by the Agency and the Planning Board, to date, pursuant to SEQR, the Agency hereby:

- (i) consents to and affirms the status of the Project as a Type 1 Project and further consents to and affirms the status of the Planning Board as "Lead Agency" within

the meaning of and for all purposes of complying with SEQR and determines that the proceedings undertaken by the Planning Board under SEQR with respect to the undertaking of the Project by the Company (as agent of the Agency) satisfy the requirements of SEQR;

(ii) reviews, considers, ratifies, and adopts such proceedings by the Planning Board, including the “Negative Declaration”;

(iii) determines that the Project will not have a significant impact on air quality or an adverse impact on ground or surface water quality as the project will connect to an existing public water supply, the project will not have a significant adverse impact on traffic levels or adversely affect noise levels and the Project is in keeping with the urban character of the area, the Project will not substantially increase solid waste production or result in the removal or destruction of vegetation or fauna or adversely impact significant fish or wildlife species habit areas or threatened or endangered species of animal or plants, and is not within or adjacent to a Critical Environmental Area, that the Project is consistent with the community’s current plans and goals and will not impact the character of the community, that the Project will not encourage a large number of people to a place for more than a few days as the inclusion of residential units is not significant, the Project will not involve changes in two or more elements of the environment when considered together or cumulatively and will not result in a substantial adverse impact on the environment and results in no major impacts and, therefore, is one which will not cause significant damage to the environment and will not have a “significant effect on the environment” as such quoted terms are defined in SEQR, and that no “environmental impact statement” as such quoted term is defined in SEQR need be prepared for this action; and

(iv) determines that all of the provisions of SEQR that are required to be complied with as a condition precedent to the approval of the Financial Assistance contemplated by the Agency with respect to the Project, and the participation by the Agency in undertaking the Project, have been satisfied. This determination constitutes a “negative declaration” (as such quoted term is defined under SEQR) for purposes of SEQR.

(K) The Project constitutes a commercial facility as defined in the New York General Municipal Law and will promote employment opportunities and prevent economic deterioration in the City of Buffalo. The Agency has reviewed the opinion of the State Comptroller (OSC Op. 85-51) and hereby specifically finds that the Project will create 571 temporary construction jobs and approximately 5 full-time jobs, and, by adaptively reusing a vacant, declining and aged structure and rehabilitating it for mixed and residential use, will be a physical and economic improvement to this sensitive area of the City of Buffalo.

(A) The Project qualifies for Agency Financial Assistance as it meets the Agency’s evaluative criteria established by the Agency as required under General Municipal Law Section 859-a(5), as evidenced by the following:

(i) *Age of Structure (must be at least 20 years old and present functional challenges to redevelopment):* The building is >20 years old – being constructed in stages from 1890 through 1950s.

(ii) *Structure has been vacant or underutilized for a minimum of 3 years (defined as a minimum of 50% of the rentable square footage of the structure being utilized for a use for which the structure was not designed or intended). Project promotes the elimination of slum and blight:* The structure has been vacant for over 16 years – since Trico abandoned the building in approximately 2005.

(iii) *Structure is not generating significant rental income (defined as 50% or less than the market rate income average for that property class):* The structure is 100% vacant and therefore has no income being generated.

(iv) *Project is in compliance with the investment and growth criteria of the Framework for Regional Growth. The redevelopment supports or aligns with Regional or Local Development Plans:* The Framework states that investment should be targeted developed areas and regional centers. This project falls within this target. Further it is within the targeted investment area of the Buffalo Building Reuse Plan.

(v) *Demonstrated evidence of financial obstacle to development without ECIDA or other public assistance (cash flow projections, documenting costs, expenses and revenues indicating below average return on investment rate as compared to regional industry averages):* The building has been vacant and unattended since 2005 and has fallen into significant disrepair. There are several structural issues that have resulted from a failing roof system and environmental contaminants that must be dealt with in order to bring the building back to life. Necessary partial demolition costs and redesign efforts have driven the total project costs up even further. The building is listed on the National Historic Register and renovations must be done in accordance with their guidelines further adding to the project costs. Cash flow projections and the resulting ROI summary are attached.

(vi) *Demonstrated support of local government entities:* Received letter from Buffalo Mayor Brown in support of project.

(vii) *LEED/Renewable Resources:* Not Applicable.

(viii) *Building or site has historic designation:* The property is listed on the National Historic Register.

(ix) *Site or structure has delinquent property or other local taxes:* The property was recently added to the tax roll at a nominal assessed value.

(x) *MBE/WBE Utilization:* Pursuant to the Real Estate Purchase Agreement between the developer and the Buffalo Brownfield Restoration Corp., the developer has agreed to make a reasonable effort in its attempt to (1) attain a minority workforce goal of 25% and a woman workforce goal of 5% on the project, (2) attain a MBE utilization goal of 25% and WBE goal of 5% on the project and (3) cause tenants and other occupants of

the project including the developer and any affiliate of the developer to first list all new employment opportunities generated at the project with the DOL, Buffalo Employment Training Center and the Workforce Investment Board.

(xi) *Transit Oriented Development:* The site is accessible via the Metro Rail Line and several bus routes including routes 8 and 25.

Section 2. The Agency hereby authorizes the undertaking of the Project and the provision of the Financial Assistance to the Company as described herein.

Section 3. Subject to the Company executing an Agent Agreement and the delivery to the Agency of a binder, certificate or other evidence of insurance for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and/or 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 agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; 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 authority to appoint the Company to act as agent of the Agency, if said appointment is not duly made, as herein expressed, shall expire one year from the date of this resolution (unless extended for good cause by the Chair, the Vice Chair, the President/Chief Executive Officer, the Vice President, the Chief Financial Officer/Treasurer, and/or the Assistant Treasurer).

A. Financial Assistance. With respect to the foregoing, and based upon the representations and warranties made by the Company in its application for Financial Assistance, the Agency hereby:

(i) authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount estimated up to \$34,360,000, and, therefore, the value of the sales and use tax exemption benefits (“sales and use tax exemption benefits”) authorized and approved by the Agency cannot exceed \$3,006,500, however, the Agency may consider any requests by the 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; and

(ii) authorizes and approves that the value of the mortgage recording tax exemption benefit (“mortgage recording tax exemption benefits”) shall not exceed \$712,500; and

B. Terms and Conditions of Financial Assistance. Pursuant to Section 875(3) of the New York General Municipal Law, and per the policies of the Agency, 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 New York State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits, taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the New York State and local sales and use tax exemption benefits; (ii) the New York State and local sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the New York State and local sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for Financial Assistance; (v) the New York State and local sales and use tax exemption benefits and/or mortgage recording tax exemption benefits, are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, fails to comply with the Investment Commitment, the Employment Commitment, and/or the Local Labor Commitment, said commitments, as described below, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the New York State and local sales and use tax exemption benefits, and/or mortgage recording tax exemption benefits, are taken in cases where the Company fails to comply with the Equal Pay Commitment and/or the Unpaid Real Property Tax Policy Commitment, as described below, being a material term or condition to use property or services in the manner approved by the Agency in connection with the Project.

As a condition precedent of receiving Financial Assistance, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must cooperate with the Agency in its efforts to recover or recapture any Financial Assistance, and promptly pay over any such amounts to the Agency that the Agency demands.

(C) Commitments. As an additional condition precedent of receiving Financial Assistance, and as a material term or condition as approved by the Agency in connection with the Project, the Company covenants and agrees and understands that it must, subject to potential modification, termination and/or recapture of Financial Assistance for failure to meet and maintain the commitments and thresholds as described below, submit, on an annual basis or as otherwise indicated below through the conclusion of the later of two (2) years following either (i) the construction completion date, or (ii) the termination of the Agent Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment- the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$91,800,000 (which represents the product of 85% multiplied by \$107,950,000, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment – that there at least 4 (four) full time equivalent ("FTE") employees in the Facility as stated in the Company's Application for Financial Assistance as described below:

- the number of current FTE employees in the then current year at the Facility; and
 - that within two (2) years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 4 (four) FTE employees [representing the product of 85% multiplied by 5 (being the 5 new FTE employee positions proposed to be created by the Company as stated in its Application)]. In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.
- (iii) Local Labor Commitment - that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

Section 4. Subject to the terms of this Inducement Resolution, the Chair, the Vice Chair, the President/Chief Executive Officer, the Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver (A) an Agent Agreement, (B) the Lease Agreement whereby the Company leases the Project to the Agency, (C) the related Leaseback Agreement whereby the Agency leases the Project back to the Company, and (D) related documents; provided, however, that (i) the rental payments under the Leaseback Agreement to the Company 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.

Section 5. Subject to the terms of this Inducement Resolution, the Chair, the Vice Chair, the President/Chief Executive Officer, the Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer, are hereby authorized, on behalf of the Agency, to negotiate, execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance acquisition and Project costs or equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement, and related documents, collectively called the "Agency Documents"); and, where appropriate, the Secretary or the Assistant Secretary of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chair, the Vice Chair, the President/Chief Executive Officer, the

Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer of the Agency shall approve, the execution thereof by the Chair, the Vice Chair, the President/Chief Executive Officer, the Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer of the Agency to constitute conclusive evidence of such approval; provided in all events recourse against the Agency is limited to the Agency's interest in the Project.

Section 6. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to negotiate, execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 7. The provision by the Agency of Financial Assistance with respect to the Project as described herein is subject to the execution and delivery of the Agency's Administrative Fee Agreement (the "Fee Agreement") and payment by the Company of an administrative fee calculated in accordance with the Fee Agreement, all within sixty (60) days of the date of this resolution. In the event the Agency has not received the executed Fee Agreement and the appropriate fee within such sixty (60) day period, this resolution shall become automatically null and void and of no further effect and the Agency shall have no liability to the Company hereunder or otherwise, unless extended in the discretion of the Chair, the Vice Chair, the President/Chief Executive Officer, the Vice President, the Chief Financial Officer/Treasurer, or the Assistant Treasurer for good cause shown.

Section 8. This resolution shall take effect immediately, and shall expire one (1) year from the date hereof unless extended for good cause by the Chair, the Vice Chair, the President/Chief Executive Officer, the Vice President, the Chief Financial Officer/Treasurer, or the Assistant Treasurer.

Dated: January 26, 2022