

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
INDUCEMENT RESOLUTION**

**356 HERTEL AVE, 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, February 22, 2023 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 356 HERTEL AVE, 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) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iii) AUTHORIZING THE UNDERTAKING OF THE PROJECT TO PROVIDE FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF A SALES TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT; AND (iv) AUTHORIZING THE NEGOTIATION AND EXECUTION OF 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, 356 HERTEL AVE, LLC or on behalf of an affiliated entity formed or to be formed (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) the acquisition by the Agency of a leasehold interest in certain property located on 356 Hertel Avenue and 42 Foundry, City of Buffalo, Erie County, New York (the “Land”), (ii) the rehabilitation of the John Kam Malt and Kiln House located in an historic Black Rock neighborhood into a mixed-use redevelopment consisting of 82 apartments, a self-storage facility, and 14,000 square feet of retail service-oriented space as well as an on-site dog park, dog wash, pedestrian plaza, and bike storage (the “Improvements”), and (iii) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the “Equipment”; and, together with the Land and the Improvements, the “Facility”); and

WHEREAS, pursuant to General Municipal Law Section 859-a, on January 17, 2023, 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) provide Financial Assistance to the Company in the form of 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 (“Financial Assistance”); 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 of and recommendations related to the Project and its January 25, 2023 resolution to approve the Project subject to the terms and conditions as described herein, 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; and

(I) The Project involves a "Type II Action" as said term is defined under the State Environmental Quality Review Act ("SEQRA") as an action designed for the preservation of the Facility and involving the maintenance and repair of an existing structure and the purchase of furnishings and equipment and therefore no other determination or procedures under SEQR are required; and

(J) The Project is compliant with the Countywide IDA Eligibility Policy, constitutes a commercial facility as defined in the 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 temporary construction jobs and approximately one (1) full-time job, and, by adaptively reusing a vacant, declining and aged structure and rehabilitating it for residential use, will be a physical and economic improvement to this sensitive area of the City of Buffalo; and

(K) 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 structure is 121 years old. Challenges to redevelopment include costs for bringing a large underutilized and undermaintained century old building into code compliance and remediating existing issues at the property while complying with

historic preservation requirements. Asbestos containing materials have been found on the premises in existing roofing, flashing and flooring materials.

(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 underutilized for 40 years. Original uses included a malt house, a kilm house, water tempering, grain elevators, tanks and a warehouse. Subsequent uses = Black Rock Milling Corp, Park & Pollard Co, Buffalo Insulation Distributors & Multiglass Products Co. Xtreme Wheels Indoor Skate Park, small office, warehouse / storage space. Current use is primarily for storage space.

(iii) *Structure is not generating significant rental income (defined as 50% or less than the market rate income average for that property class):* Insignificant income = \$2,000/ month is being generated at this 116,000 sq ft facility.

(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:* Project supports public investment to maximize the use of existing infrastructure, facilities, and encourages the preservation and adaptive reuse of a historic building.

(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):* Cash flow projects have been provided showing below average return on investment rates: 4.4% with ECIDA assistance, 3.8% without ECIDA assistance.

(vi) *Demonstrated support of local government entities:* Letters of Support: Pending. The property has been identified as a valuable historic asset worth preserving as demonstrated by its addition to the National Register of Historic Places as well as inclusion on the NYS Register of Historic Places. The Mayor of Buffalo has submitted a letter in support of the Project.

(vii) *LEED/Renewable Resources:* The site design was prepared in consideration of the Buffalo Green Code and limitations of the City of Buffalo combined sewer systems and will incorporate measures to mitigate storm water runoff, including permeable pavement throughout the site, as well as environmentally conscious design features including energy star equipment and geothermal heating systems.

(viii) *Building or site has historic designation:* The building is listed on the National Register of Historic Places as well as inclusion on the NYS Register of Historic Places.

(ix) *Site or structure has delinquent property or other local taxes:* Taxes are current.

(x) *MBE/WBE Utilization:* General Contractor LeChase supports MBE/WBE through its' XBE Program and has retained MBE/WBE subcontractors.

(xi) *Transit Oriented Development:* Located along NFTA's #23 bus line. Property adjacent to Beltline and CSX railroad line.

(xii) *Other:* The site has been largely abandoned for over 40 years and is a safety hazard. The site is located within a distressed census tract.

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 appointment of the Company as agent of the Agency, if utilized, 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 \$7,000,000 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 \$612,500 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.

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, 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 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, 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 made with respect to the Project at the time of Project completion equals or exceeds \$27,257,630 (the product of 85% multiplied by \$32,067,800, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment –that within two (2) years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 35 FTE employees [being the product of 85% multiplied by 42 FTE employee positions proposed to be created by the Company as stated in its Application)]. 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, on behalf of the Agency, the Agent Agreement, a sales tax exemption letter (the "Sales Tax Exemption Letter"), a bill of sale (the "Bill of Sale") whereby the Agency at the completion of the installation period transfers to the Company title to the Equipment acquired during the installation period by the Company as agent of the Agency, and related documents.

Section 5. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to 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 6. 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 7. 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: February 22, 2023