

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
INDUCEMENT RESOLUTION**

HARBORCENTER DEVELOPMENT, LLC

A regular meeting of the Erie County Industrial Development Agency was convened on Tuesday, February 19, 2013 at 9:00 a.m.

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

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF HARBORCENTER DEVELOPMENT, LLC (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 FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH THE PILOT AGREEMENT, AND (C) A MORTGAGE RECORDING TAX EXEMPTION FOR FINANCING RELATED TO THE PROJECT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX 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, HARBORCENTER DEVELOPMENT, LLC, for itself or on behalf of an entity formed or to be formed (collectively, the "Company") has submitted an application to the Agency (the "Application") requesting the Agency's assistance with a certain project located at 75 Main Street, Buffalo, New York (the "Project") consisting of: (i) a 1.77+/- acre parcel of land (the "Land"), (ii) the construction and/or renovation, upgrading and equipping of a 649,500+/- SF mixed-use facility to include 8,000+/- SF of retail space, 12,000+/- restaurant space, a 144,000+/- SF full service hotel with 200+/- beds, a 115,000+/- SF hockey facility with two (2) ice rinks, and a 370,500+/- SF five-level parking garage (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 February 15, 2013, at 9:00 a.m., at the Agency's offices located at 143 Genesee Street, Buffalo, New York 14203, the Agency held a public hearing with respect to the Project and the proposed financial assistance being contemplated by the Agency (the "Public Hearing") whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, constructing, and equipping the Facility pursuant to an agent 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 Improvements, the Equipment and personal property constituting the Facility; and (iii) provide financial assistance to the Company in the form of (a) an exemption from all New York State and local sales and use taxes 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, (b) a partial real property tax abatement through the PILOT Agreement for the benefit of each municipality and school district having taxing jurisdiction over the Project, and (c) a mortgage recording tax exemption for the financing related to the Project (collectively, the sales and use tax exemptions, the PILOT Agreement and the mortgage recording tax exemption are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, the Agency contemplates that the Financial Assistance provided to the Company will deviate from the Agency's Uniform Tax Exemption Policy (the "UTEP"). The Project, as described above, includes, as a component of the Project, the construction of certain restaurant and retail facilities. The Agency proposes to deviate from its UTEP and authorize the Project's restaurant and retail components; and

WHEREAS, Notice Letters detailing the proposed deviation from the UTEP were mailed or delivered to the chief executive officers of each Affected Tax Jurisdiction on February 8, 2013; and

WHEREAS, The New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), as lead agency on behalf of its subsidiary, the Erie Canal Harbor Development Corporation ("ECHDC"), originally approved of the Canalside Land Use Improvement Project which included approximately 1.1 million square feet of commercial and residential space within the Canalside Project area under an ESD General Project Plan (GPP) in 2010. When the Bass Pro Outdoor World Store component was removed from the Canalside Project, a Modified GPP plan was adopted by ESD in October, 2010. ESD undertook environmental review with respect to the Modified GPP in accordance with applicable provisions of the State Environmental Quality Review Act ("SEQR"), which included a review of the proposed activities upon the Webster Block, which is the parcel of land upon which the Project is proposed to be constructed. ESD issued a Final Generic Environmental Impacts State ("FGEIS")

with respect to the Canalside Project (which includes the Webster Block) on January 21, 2010, and issued its SEQR Findings Statement for Canalside on March 25, 2010; and

WHEREAS, the Project as described herein on the Webster Block differs from the assumption and thresholds established in the FGEIS for Canalside; and

WHEREAS, on October 3, 2012, ESD established the Project as a Type 1 Action and distributed a Notice of Lead Agency Designation and Project Update and a full Environmental Assessment Form (“EAF”) declaring its intent to re-establish itself as Lead Agency for the Project and detailing the proposed changes to the Modified GPP and describing in detail the potential impacts of the Project; and

WHEREAS, the Agency did not object to the establishment of ESD as Lead Agency; and

WHEREAS, on November 15, 2012, ESD issued its Negative Declaration (the “Negative Declaration”) with respect to the Project, determining that the Project would have no significant effect on the Environment.

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, 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

(F) The Project constitutes a "Type I Action" as defined under 6 N.Y.C.R.R. § 617.4 of SEQR, subject to coordinated review. Based upon a thorough and complete review of the Application and its accompanying materials and information, the Agency's own independent review and participation in the SEQR review as an involved agency for the Project, and the FGEIS, the Modified GPP, the EAF, the ESD SEQR proceedings and the Negative Declaration dated November 15, 2012, the Agency hereby:

(i) consents to and affirms the status of the Project as a Type I action pursuant to SEQR and consents to and affirms the status of ESD as Lead Agency for the Project pursuant to Section 617.6(a) of the SEQR regulations; and

(ii) determines that the proceedings undertaken by ESD as Lead Agency under SEQR with respect to the acquisition, construction and equipping of the Facility satisfy the requirements of SEQR; and

(iii) ratifies the proceedings conducted by ESD as Lead Agency pursuant to SEQR, as well as ESD's determination that the Project does not pose a significant potential adverse environmental impact, thus warranting the issuance of a negative declaration, as that term is defined in SEQR; 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.

(H) The Agency hereby determines that the Project's hotel component meets the Agency's Hotel Assistance Policy as described in the UTEP, as it is a new hotel being constructed in connection with a major regional destination attraction and the hotel component would directly support the operations of the major regional attraction.

(I) The Agency hereby approves of the proposed deviation from the UTEP with respect to permitting the provision of financial assistance to the Project's restaurant and retail components in order to encourage and facilitate the redevelopment of this vacant parcel of land and the Project as a regional destination, to support the significant financial investment being made with respect to the Project, and to encourage and create private sector employment opportunities.

Section 2. 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 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 Agent Agreement, if utilized, shall expire one year from the date of this resolution (unless extended for good cause by the Chairman, the Vice Chairman, the Chief Executive Officer, the Chief Operating Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, and/or the Assistant Treasurer).

Section 3. Subject to the terms of this Inducement Resolution, the Chairman, the Vice Chairman, the Chief Executive Officer, the Chief Operating Officer, the Executive 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) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Land and Project back to the Company, and (C) the PILOT Agreement and 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; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy, or procedures for deviation have been complied with accordingly.

Section 4. Subject to the terms of this Inducement Resolution, the Chairman, the Vice Chairman, the Chief Executive Officer, the Chief Operating Officer, the Executive 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, PILOT 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 Chairman, the Vice Chairman, the Chief Executive Officer, the Chief Operating Officer, the Executive Vice President, the Chief Financial Officer/Treasurer and/or the Assistant Treasurer of the Agency shall approve, the execution thereof by the Chairman, the Vice Chairman, the Chief Executive Officer, the Chief Operating Officer, the Executive 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 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 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 Chairman, the Vice Chairman, the Chief Executive Officer, the Chief Operating Officer, the Executive 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 Chairman, the Vice Chairman, the Chief Executive Officer, the Chief Operating Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, or the Assistant Treasurer.

Dated: February 19, 2013