

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AUTHORIZING RESOLUTION

Zaepfel Development Co. – Tonawanda Pirson, LLC Project

A regular meeting of the Erie County Industrial Development Agency was convened on Wednesday, December 16, 2020, at 12:00 a.m.

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

**RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT
AGENCY AUTHORIZING THE AMENDMENT TO A CERTAIN PILOT
AGREEMENT ENTERED INTO WITH TONAWANDA PIRSON, LLC**

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, on September 16, 2013, the Agency accepted the application (the "Application") submitted by, and authorized the provision of Financial Assistance, as defined under the Act, to Tonawanda Pirson, LLC (the "Company") with respect to a certain project (the "Project") consisting of: (i) a portion of land located at 779 Two Mile Creek Road, Tonawanda, New York (the "Land") to be improved thereon with a 310,000+/- SF facility comprising of 264,000+/- SF of climate-controlled warehouse space, 32,000+/- SF of production space for manufacturing and packaging of candies and confections, and 14,000+/- SF of general office space (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 and Improvements, the "Facility"); and

WHEREAS, the Agency's Project approval required that the Company maintain and create 246 full time equivalent employee positions at the Project Facility (the "Original Job Commitment"); and

WHEREAS, the Agency's Project approval provided for a real property tax abatement benefit through a 10-year Payment-in-Lieu-of Tax agreement for the benefit of each municipality and school district having taxing jurisdiction over the Project, and

WHEREAS, on December 31, 2014, the Agency and the Company entered into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency acquired a leasehold interest in the Facility and subleased such interest in the Facility back to the Company (the "Straight Lease Transaction") and also pursuant to which the Agency and the Company entered into that certain Payment-in-Lieu-of Tax Agreement (the "PILOT Agreement"), said benefits thereunder to run for a 10 year benefit period and expire upon the conclusion of the 2026 County of Erie (the "County") and Town of Tonawanda (the

“Town”) tax year, and the 2025-2026 Kenmore-Town of Tonawanda Union Free School District (the “School District” and collectively with the County and the Town, the “Affected Tax Jurisdictions”) tax year; and

WHEREAS, on or about March 24, 2020, the Company’s tenant in the Project Facility ceased operations, such that no employees were and are currently working within the Facility; and

WHEREAS, the Company has informed the Agency that it is in negotiations with a prospective new tenant, Jemko Transport, that may occupy the entire Facility, and plans to create 20 full time and 2 part time positions (the “Revised Job Commitment”); and

WHEREAS, the Company has requested that the Agency, rather than terminate the existing Straight Lease Transaction and related PILOT Agreement due to the failure of the Company to meet its Original Job Commitment, instead amend the Straight Lease Transaction and related PILOT Agreement (collectively, the “Amendment”) to provide for a 7-year real property tax abatement benefit time period, instead of the ten-year real property tax abatement benefit time period, being the same benefit time period that the Company would have originally qualified for based upon the Revised Job Commitment had it committed to such New Job Commitment at the time it submitted its Application; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution authorizing the Amendment, subject to the following conditions (i) no additional financial assistance is being conferred through the proposed Amendment, (ii) the PILOT Agreement, as amended, will now terminate effective upon the conclusion of the 2023 County and Town tax year, and 2022-2023 School District tax year; (iii) the payment of \$42,988.00 by the Company, to the Agency, for the benefit of and distribution to the Affected Tax Jurisdictions being the difference between the payment due under the 10-year PILOT Agreement scheduled benefit and the 7-year PILOT Agreement scheduled benefit for the 2020 County and Town Tax Year and the 2019-2020 School District tax year, and (iv) the payment by the Company of all costs of the Agency to effectuate the foregoing; and

WHEREAS, pursuant to the applicable requirements of Article 8 of the New York Environmental Conservation Law, and the regulations promulgated therein at 6 N.Y.C.R.R. Part 617 (collectively referred to as “SEQRA”), the Agency must determine the potential environmental significance of the Amendment, as proposed herein.

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

Section 1. Pursuant to SEQRA, the Agency hereby finds and determines that the Transaction is a “Type II action” as said quoted term is defined under 6 N.Y.C.R.R. 671.5(c)(23), and is not subject to further review under SEQRA.

Section 2. The occupancy of the Facility by Jemko Transport 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 proposed Amendment as described herein, 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.

Section 3. The Agency has complied with the Intermunicipal Move procedures as detailed in the Agency's Uniform Tax Exemption Policy, and hereby approves of the occupancy of the Facility by Jemko Transport.

Section 4. The Agency hereby authorizes the Amendment, subject to the following conditions: (i) no additional financial assistance is being conferred through the proposed Amendment, (ii) the PILOT Agreement, as amended, be revised to terminate effective upon the conclusion of the 2023 County and Town tax year, and the 2022-2023 School District tax year; (iii) the payment of \$42,988.00 by the Company, to the Agency, for the benefit of and distribution to the Affected Tax Jurisdictions being the difference between the payment due under the 10-year PILOT Agreement scheduled benefit and the 7-year PILOT Agreement scheduled benefit for the 2020 County and Town Tax Year and the 2019-2020 School District tax year, and (iv) the Company shall pay all costs of the Agency to effectuate the foregoing; and

Section 5. Subject to the terms of this Authorizing Resolution, the Chair, the Vice Chair, the President/Chief Executive Officer, the Chief Operating 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 amended Project Agreement establishing a commitment to the Revised Job Commitment, (B) an amended PILOT Agreement, (C) amendments to the related Lease Agreement and Leaseback Agreement by and between the Company and the Agency, and (D) related documents, all of the foregoing with such changes, variations, omissions and insertions as the Chair, the Vice Chair, the President/Chief Executive Officer, the Chief Operating 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 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. These Resolutions shall take effect immediately.

Dated: December 16, 2020