

ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
AMENDATORY INDUCEMENT RESOLUTION

**500 SENECA 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, May 20, 2015 at 9:00 a.m.

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

AMENDATORY INDUCEMENT RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL OF THE REVISION TO THE PROJECT DESCRIPTION AND THE EXECUTION AND DELIVERY OF A REVISED SALES TAX EXEMPTION PACKAGE AND RELATED DOCUMENTS WITH RESPECT TO THE 500 SENECA STREET, LLC PROJECT (AS MORE FULLY DESCRIBED BELOW)

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, 500 SENECA STREET, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATES, SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (the "Company") has submitted an application to the Agency (the "Original Application") requesting the Agency's assistance with a certain project (the "Original Project") consisting of: (i) a 1.87+- acre parcel of land located at 500 Seneca Street in the City of Buffalo, Erie County, New York (the "Land") together with an existing 324,000+- SF building thereon known as the historic F. N. Burt Company Factory (the "Existing Improvements"), (ii) the construction and/or renovation, expansion, upgrading and equipping of the Existing Improvements thereon into a mixed-use project consisting of 195,000+- SF of Class A office space, 20,000+- SF of manufacturing, processing or distribution space, 10,000+- SF of commercial space, and 110,000+- SF of dedicated below market space for community and/or cultural organizations, together with secured on-site parking (the "Improvements"), and (iii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property; and

WHEREAS, by resolution adopted on February 26, 2014 (the "Initial Resolution") the Agency authorized financial assistance to the Company with respect to the Original Application in the form of an abatement from sales and use tax on materials and equipment incorporated into the Project for (a) building site, shell and core and (b) materials and equipment incorporated for tenant finishes for non-retail tenants only, and an abatement from mortgage recording tax (collectively, the "Financial Assistance"); and

WHEREAS, based upon representations and warranties made by the Company in the Original Application, the Agency, within the terms of the Initial Resolution, authorized and approved the Company, as its agent, to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in an amount up to \$11,782,869.00 which results in New York State and local sales and use tax exemption benefits not to exceed \$1,031,002.00, and required the Company to evidence that total investment actually made with respect to the Project, at the time of Project completion, equals or exceeds \$26,976,980.00 (which represented the product of 85% multiplied by \$31,737,624.00 (being the total project cost as stated in the Original Application for financial assistance at that point in time)); and

WHEREAS, on April 10, 2015, the Agency received an amended application (the "Amended Application") from the Company requesting a revision to the scope of the Project to include 110+- market-rate apartments, a revision to the square footage of the other improvements and informing the Agency that the Project costs have increased by approximately \$3,937,776.00 (the "Amended Project"), and

WHEREAS, pursuant to General Municipal Law Section 859-a, on April 28, 2015 at 9:00 a.m. at the Agency's offices located at 95 Perry Street-Suite 403, Buffalo, New York 14203, the Agency held a public hearing with respect to the Amended 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, the Agency desires to amend the Initial Resolution and approve this Amendatory Resolution with respect to the Amended Project in order to revise of the scope of the Project, along with the execution and delivery of certain documents in connection with same.

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

Section 1. All recitals, findings and determinations of the Agency contained in the Initial Inducement are hereby reaffirmed, ratified, restated and incorporated herein by reference as if set forth herein in their entirety, except as modified by this Resolution.

Section 2. The description of the Original Project is hereby revised in accordance with the Amended Application to include the construction and/or renovation, expansion, upgrading and equipping of the Existing Improvements thereon into a mixed-use project consisting of Class A office space, 110+- market-rate apartments; manufacturing, processing or distribution space, and commercial space, together with secured on-site parking (the

"Improvements"), and (iii) the acquisition and installation by the Company of certain items of machinery, equipment and other tangible personal property.

Section 3. Based upon the representations and warranties made by the Company in its application with respect to the Amended Project, Agency Policy Committee review of the Amended Project and its May 7, 2015 resolution to approve the Amended Project, subject to the terms and conditions as described herein, public hearing comments, and Agency board member review, discussion and consideration of same, the Agency hereby finds, determines and hereby amends the second full paragraph in Section 3 of the Initial Resolution in its entirety to read as follows:

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 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 estimated amount up to \$16,000,000.00, which may result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$1,400,000.00. 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.

Section 4. Section 3(i) and 3(iv) of the Initial Resolution are hereby replaced in their entirety to read as follows:

- (i) the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$30,324,090 (which represents the product of 85% multiplied by \$35,675,400 (representing the total project cost as stated in the Company's amended application for financial assistance));
- (i) (iv) that, at the conclusion of the later of two years following either (i) the construction completion date or (ii) the termination of the Agent and Financial Assistance Agreement, as applicable, the Company has maintained and created FTE employment at the Facility equal to 32 FTE employees (representing the sum of 20 Baseline FTE plus the product of 85% multiplied by 14 (representing the 14 new FTE employee positions as proposed to be created by the Project as stated in the Company's application for financial assistance)); and

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 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. All actions heretofore undertaken by the Agency and the Company as agent of the Agency are ratified and approved and the Agency and the Company, as agent of the Agency, are hereby authorized to continue to undertake the Project.

Section 7. These Resolutions shall take effect immediately.

Dated: May 20, 2015