

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
INDUCEMENT RESOLUTION**

**ZAEPFEL DEVELOPMENT CO., INC. AND/OR AN AFFILIATE, SUBSIDIARY, OR
ENTITY FORMED OR TO BE FORMED ON ITS BEHALF**

A regular meeting of the Erie County Industrial Development Agency was convened on Monday, September 16, 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 ZAEPFEL DEVELOPMENT CO., INC. AND/OR AN AFFILIATE, SUBSIDIARY, OR ENTITY FORMED OR TO BE FORMED ON ITS BEHALF 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) APPOINTING THE COMPANY, OR ITS DESIGNEE, AS ITS AGENT TO UNDERTAKE THE PROJECT; (iv) 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, (B) A REAL PROPERTY TAX ABATEMENT BENEFIT THROUGH THE PILOT AGREEMENT, AND (C) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT; AND (v) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE 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, ZAEPFEL DEVELOPMENT CO., INC. AND/OR AN AFFILIATE, SUBSIDIARY, OR ENTITY FORMED OR TO BE FORMED ON ITS BEHALF (individually, and/or collectively, 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 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, pursuant to General Municipal Law Section 859-a, on September 9, 2013, at 9:30 a.m., at the Town of Tonawanda's Town Hall, located at 2919 Delaware Avenue (Council Room), Kenmore, NY 14217, 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, on September 11, 2013, the Agency mailed or delivered written notification to the chief elected officers of the Town of Cheektowaga and the Town of Tonawanda, as required by and consistent with the Uniform Tax Exemption Policy (the "Notice of Intermunicipal Movement"), detailing the proposed intermunicipal move of the Company from an existing facility in the City of Buffalo, New York; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, constructing and/or renovating and equipping the Facility pursuant to an Agent and Financial Assistance Agreement (the "Agent and Financial Assistance 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, or equipping of the Facility, (b) a real property tax abatement benefit 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 benefit for the financing related to the Project (collectively, the sales and use tax exemption benefit, the real property tax exemption benefit, and the mortgage recording tax exemption benefit are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, on March 15, 2005, the Town Board of the Town of Tonawanda (the "Town") declared itself Lead Agency and issued a determination of significance for a positive Declaration for the North Youngman Commerce Center project which entails the development of an approximately 94 acre commerce park to be ultimately developed as various individual parcels within the project site by private developers (the "NYCC Project"); and

WHEREAS, on May 4, 2009, the Town accepted a Draft Generic Environmental Impact Statement (the "DGEIS") for the NYCC Project as being completed consistent with the applicable requirements of Article 8 of the Environmental Conservation Law, and the regulations promulgated therein at 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"); and

WHEREAS, the Town proceeded to conduct a public comment period for the DGEIS as mandated by SEQRA; and

WHEREAS, on June 15, 2009, the Town accepted a Final Generic Environmental Impact Statement (the "FGEIS") for the NYCC Project as being completed pursuant to the applicable requirements of SEQRA; and

WHEREAS on July 13, 2009, the Town issued its Findings Statement (the "Findings Statement") approving the NYCC Project, and confirming that the Town had considered the relevant environmental impacts, facts and conclusions disclosed in the DGEIS and the FGEIS; that the Town had weighed and balanced the relevant environmental impacts with social, economic and other considerations; that the requirements of SEQRA had been met; and confirming that, consistent with social, economic, and other essential considerations from among the reasonable alternatives available, that the action to be carried out is the one that avoids or minimizes to the maximum extent practicable, adverse environmental impacts disclosed in the DGEIS and FGEIS, and that adverse environmental impacts will be minimized or avoided to the maximum extent practicable by incorporating, as conditions to this determination, those mitigating measures that were identified as practicable; and

WHEREAS, in a letter dated September 13, 2013, the Chairman of the Town's SEQR Committee informed the Agency that the Town's SEQR Committee, at its September 12, 2013 meeting, reviewed the Project, the Supplemental Findings Statement Project Evaluation Form, and the Full Environmental Assessment Form submitted by the Company, and determined that no further review under SEQRA is necessary because the Project conforms with the conditions and thresholds established in the DGEIS, the FGEIS and the Findings Statement accepted and issued by the Town; 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, if applicable, 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

(F) The Agency has complied with the Intermunicipal Movement procedures as detailed in the Agency's Uniform Tax Exemption Policy; and

(G) In reviewing the Project as currently proposed pursuant to the conditions and mitigation measures set forth in the DGEIS, FGEIS, and the Findings Statement that were prepared for the NYCC Project, the Town's SEQRA Committee has determined that no further SEQRA compliance is required for the Project since it will be carried out in conformance with the conditions and thresholds established in the Findings Statement, and as such, no further SEQRA review is required for the Project pursuant to 6 N.Y.C.R.R. Section 617.10(d)(1); and

(H) Wythe Will Tzetzso (the "Tenant") will occupy the Facility. The Agency hereby approves the subleasing of space in the Project to the Tenant and authorizes the Company to proceed with the Project as herein authorized; and

Section 2. Subject to the Company executing an Agent and Financial Assistance 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.

With respect to the foregoing, and based upon the representation 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 \$ 9,000,000, which may result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$787,500. 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.

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 state and local sales and use tax exemption benefits, mortgage recording tax benefits, and/or real property tax abatement (PILOT) 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 sales and use tax exemption benefits; (ii) the 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 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; or (v) the sales and use tax exemption benefits and/or mortgage recording tax 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 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 sales and use tax exemption benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits and mortgage recording tax benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

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 recapture of state and local sales and use tax exemption benefits, mortgage recording tax benefits, and/or PILOT benefits for failure to meet and maintain the thresholds as described below, submit, on an annual basis or as indicated below through the term of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$15,895,000 (which represents the product of 85% multiplied by \$18,700,000, being the total project cost as stated in the Company's application for financial assistance); and
- (ii) that there are at least 217 existing full time equivalent ("FTE") employees located at, or to be located at, the Facility as stated in the Company's application for financial assistance (the "Baseline FTE"); and

- (iii) the number of current FTE employees in the then current year at the Facility; and
- (iv) that, at the conclusion of year two following Project completion and through the term of the PILOT Agreement, the Company has maintained and created FTE employment at the Facility equal to 246 FTE representing the sum of: (a) 100% of the Baseline FTE (217) plus (b) 29 [representing the product of 85% multiplied by 35 representing the projected number of FTE employee positions as proposed to be created by the Company as stated in the Company's application for financial assistance)]; and
- (v) that, on a quarterly basis during the construction period, the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy.

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) an Agent and Financial Assistance Agreement, (B) the Lease Agreement whereby the Company leases the Project to the Agency, (C) the related Leaseback Agreement conveying the Land and Project back to the Company, and (D) the PILOT Agreement and (E) 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, 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 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 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 7. 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: September 16, 2013

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

I, the undersigned Assistant Secretary of the Erie County Industrial Development Agency, DO HEREBY CERTIFY:

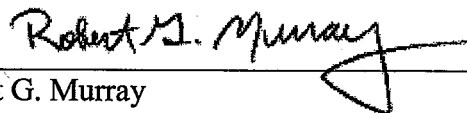
That I have compared the annexed extract of minutes of the meeting of the Erie County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on September 16, 2013, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of the Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY, that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 16th day of September, 2013.



Robert G. Murray
Assistant Secretary

[SEAL]