

**ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY
INDUCEMENT RESOLUTION**

**CURTISS BUFFALO, INC., 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, June 18, 2014 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 CURTISS BUFFALO, INC., AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (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) 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 FOR PURCHASES AND RENTALS RELATED TO THE CONSTRUCTION, RECONSTRUCTION AND/OR RENOVATION, UPGRADING AND EQUIPPING OF THE PROJECT AND (B) A MORTGAGE RECORDING TAX EXEMPTION; AND (v) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK 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, CURTISS BUFFALO, INC., 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 "Application") requesting the Agency's assistance with a certain project (the "Project") consisting of: (i) a leasehold interest in a parcel(s) of land located at 204-216 Franklin Street, City of Buffalo, Erie County, New York (the "Land") improved thereon with the 57,560+/- SF historic Curtiss Building (the "Existing Improvements"); (ii) the construction, reconstruction and/or renovation,

upgrading and equipping of the Existing Improvements on the Land to accommodate a high-end boutique hotel containing 67+/- rooms, a fine dining restaurant and lounge, one (1) residential unit, and a spa and fitness component (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").

WHEREAS, pursuant to General Municipal Law Section 859-a, on June 2, 2014, at 8:30 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 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 Project constitutes a "retail" project as defined under Section 862(2)(a) of the Act and as such requires additional findings; and

WHEREAS, the Agency must, prior to providing any Financial Assistance to such a "retail" Project find that: (1) the Project is likely to attract a significant number of visitors from outside the economic development region in which the Project is located as established by section two hundred thirty of the New York Economic Development Law; or (2) the predominant purpose of the Project would be to make available goods or services which would not, but for the Project, be reasonably accessible to residents of the City of Buffalo because of a lack of reasonably accessible retail trade facilities offering such goods or services; or (3) the Project is located in a "Highly Distressed Area" as such term is defined in Section 854(18) of the Act; and

WHEREAS, if the Agency makes a retail finding based on item (2) or (3), as described in the immediately preceding Whereas clause, then, in addition, the Agency must also find that the undertaking of the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State; and thereafter, the chief executive officer of the County of Erie, New York, shall confirm the proposed action of the Agency; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of constructing, reconstructing and/or renovating, upgrading and equipping the Facility pursuant to an agent 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 Existing Improvements, 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 construction, reconstruction and/or renovation, upgrading or equipping of the Facility; and (b) a mortgage recording tax exemption (the sales and use tax exemptions and the mortgage recording tax exemptions are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, by resolution adopted June 18, 2014, the Agency adopted a negative declaration in compliance with the New York State Environmental Quality Review Act; 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 the Project and its June 5, 2014 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 constructing, reconstructing and/or renovating, upgrading 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 is compliant with the Countywide IDA Uniform Tax Exemption Policy (the "UTEP") and the ECIDA Hotel/Motel Policy amendment made thereto and effective as of September 19, 2012 because the hotel component of the Project is a component part of an Adaptive Reuse Project that meets the additional requirements of the Agency's Adaptive Reuse Project policy; and

(G) The Project 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, promote employment opportunities, and by adaptively reusing a vacant, declining and aged structure and rehabilitating it for a residential use, amongst other mixed uses, will prevent economic deterioration and be a physical and economic improvement to this sensitive area of the City of Buffalo; and

(H) The Project is located within a "Highly Distressed Area" as such term is defined in Section 854(18) of the Act and therefore qualifies for Financial Assistance under Section 862(2)(b)(ii) of the Act. The Agency hereby finds that, as required under Section 862(2)(c) of the Act, the undertaking of the Project will serve the public purpose of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in New York State. In compliance with Section 862(2)(c) of the Act, prior to providing Financial Assistance to the project, the Chief Executive Officer of the County of Erie shall provide written confirmation confirming that the Project will serve the public purpose of the Act by preserving permanent private sector jobs or increasing the overall number of permanent, private sector jobs in the State of New York; and

(I) The Project qualifies for Agency Financial Assistance as it is compliant with the Agency's Adaptive Reuse Project Policy as evidenced by the following:

- (i) the building is approximately 102 years old and functional issues related to its age present challenges to its reuse; and
- (ii) the building has been vacant for at least the past twelve (12) years; and
- (iii) the building is not generating any rental income; and
- (iv) the Project is in compliance with the investment and growth criteria of the Framework for Regional Growth; and
- (v) the Applicant has demonstrated evidence of financial obstacles to development of the Project without Agency or other public assistance; and
- (vi) the Project has received the support of local governmental entities; and
- (vii) the structure requires significant costs to comply with building codes; and

(J) The Agency hereby approves the subleasing of space in the Project to Baja Beach Club, Inc., and authorizes the Company to proceed with the Project as herein authorized.

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 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 construction, reconstruction and/or renovation, upgrading and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to construct,

reconstruct and/or renovate, upgrade 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, shall expire one year from the date of this resolution (unless extended for good cause by the Chair, the Vice Chair, the Chief Executive Officer, the Chief Operating Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, and/or the Assistant Treasurer).

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 \$6,575,000.00, which may result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$575,000.00. 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.

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 and mortgage recording tax 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 Financial Assistance, 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 Financial Assistance, 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 and/or mortgage recording tax exemption benefits for failure to meet and maintain the thresholds as described below, submit, on an annual basis or as indicated below through the conclusion of the later of either two years following (i) the construction completion date or (ii) the termination of the Agent 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 \$15,385,000.00 (which represents the product of 85% multiplied by \$18,100,000.00, being the total project cost as stated in the Company's application for financial assistance);
- (ii) the number of current FTE employees in the then current year at the Facility;
- (iii) that the Company has created FTE employment at the Facility equal to 25 FTE employees, (representing the product of 85% multiplied by 30 (being the number of new FTE employee positions as proposed to be created by the Company as stated in the Company's application for Financial Assistance)); and
- (iv) that the Company adheres to and complies with the Agency's Local Labor Workforce Certification policy.

Section 4. Subject to the terms of this Inducement Resolution, the Chair, the Vice Chair, 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) related documents; provided, however, that 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.

Section 5. Subject to the terms of this Inducement Resolution, the Chair, the Vice Chair, 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 Chair, the Vice Chair, 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 Chair, the Vice Chair, 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 6. 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 Chair, the Vice Chair, 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 Chair, the Vice Chair, the Chief Executive Officer, the Chief Operating Officer, the Executive Vice President, the Chief Financial Officer/Treasurer, or the Assistant Treasurer.

Dated: June 18, 2014

STATE OF NEW YORK)
COUNTY OF ERIE) SS:

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

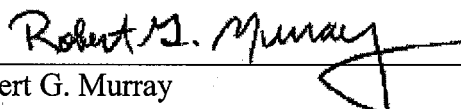
That I have compared the annexed extract of minutes of the meeting of the Erie County Industrial Development Agency (the "Agency"), including the resolution contained therein, held on June 18, 2014, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings 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 18th day of June, 2014.



Robert G. Murray
Assistant Secretary

[SEAL]