

**MINUTES OF THE MEETING
OF THE
MEMBERSHIP OF THE
ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (ECIDA)**

DATE AND PLACE: August 22, 2018, at the Erie County Industrial Development Agency (the “ECIDA” or “Agency”), 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203

PRESENT: Richard Lipsitz, Jr., Hon. Glenn R. Nellis, Kenneth A. Schoetz, Hon. Mark C. Poloncarz, Hon. Diane Benczkowski, Hon. Brian J. Kulpa, Dottie Gallagher, Rev. Mark E. Blue, John J. Mudie, Art Wingerter, Sister Denise Roche

EXCUSED: Tyra Johnson, Brenda W. McDuffie¹, Hon. Bryon W. Brown, Hon. Darius G. Pridgen, Hon. Patrick B. Burke, Hon. Joseph H. Emminger, James F. Doherty, Charles F. Specht

OTHERS PRESENT: Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President; Atiqah Abidi, Assistant Treasurer; Michael Alexander, Loan Manager and Robert G. Murray, Secretary

GUESTS: Michael Szukala, Chair, Finance & Audit Committee; Steve Carmina, on behalf of Michigan Broadway, LLC; Mark Romanowski, on behalf of Pierce Arrow Kanaka, LLC; Irving Levi, on behalf of Pierce Arrow Kanaka, LLC

There being a quorum present at 9:02 a.m., Mr. Lipsitz called the meeting to order.

MINUTES

The minutes of the July 25, 2018 meeting of the members were presented. Ms. Gallagher moved and Mr. Nellis seconded, to approve of the minutes. Mr. Lipsitz called for the vote, and the minutes were then unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Abidi presented the July 2018 financial report, noting that the balance sheet shows the ECIDA finished the month with total assets of \$29.9 million and net assets of \$20.8 million. The monthly income statements show an operating net loss of \$57,200. Operating revenue was below budget for the month by \$59,000 due mainly to timing of receipt

¹ Ms. McDuffie participated via telephone conference call, however, she did not count for quorum purposes and is not considered present or eligible for purposes of voting on any action items.

of administrative fees. Total operating expenses were below budget by \$12,000, with the largest variance in professional service costs and general office expenses. After factoring in strategic investments and depreciation, there was a net loss of \$163,000 for the month. The year to date income statement reflects operating revenue of \$1,023,000, being \$600,000 below budget for the year. Operating expenses of \$1.7 million are slightly below budget for the year. After special project grants, strategic initiatives and depreciation, there is currently a net loss of \$889,000 for the year. There being no further questions or comments, Mr. Lipsitz directed that the report be received and filed.

95 Perry Street Sub-Lease Renewal. Mr. Cappellino confirmed that the ECIDA's current lease at its current facility expires on September 30, 2018. Mr. Cappellino explained that the staff has been searching for and analyzing alternative space options since January, 2018, and confirmed that the ECIDA staff has made a determination that renewal of the current sub-lease in the existing space for a term of five years is in the ECIDA's best interest. Mr. Cappellino reviewed the various terms and conditions of the sub-lease renewal as described in a memorandum presented to members and made a part of these minutes. General discussion ensued. Mr. Nellis then moved to approve of the authorizing and negotiation and execution of a sub-lease agreement for office space located at 95 Perry Street, Buffalo, New York. Mr. Blue seconded the motion. Mr. Lipsitz called for the vote, and the following resolution was unanimously approved.

RESOLUTION APPROVING AND AUTHORIZING THE NEGOTIATION
AND EXECUTION OF A LEASE BETWEEN THE AGENCY AND THE NEW
YORK STATE URBAN DEVELOPMENT CORPORATION, D/B/A EMPIRE
STATE DEVELOPMENT ("ESD") FOR OFFICE SPACE LOCATED AT 95
PERRY STREET, BUFFALO, NEW YORK

Approval of UDAG Grant to ILDC for Master Plan at Bethlehem Steel Site. Mr. Cappellino reminded members of the ILDC's master planning effort and efforts to prepare a generic environmental impact statement ("GEIS") with respect to the Bethlehem Steel property. Mr. Cappellino confirmed that the ILDC has been awarded grant funding of up to \$709,000 from various sources to pay for master planning and GEIS efforts, however, Mr. Cappellino also confirmed that only \$30,000.00 of the grant funds are able to be received up front, such that the remainder of the grant funding can only be requested on a reimbursement basis. Mr. Cappellino stated that the ILDC does not have the necessary moneys from its general fund to pay for the invoices that will ultimately be reimbursed and as such, has requested that the ECIDA grant up to \$500,000 on a revolving basis to the ILDC, to allow the ILDC to pay for such invoices and submit for reimbursement from the grant sources. Upon receipt of the grant money, the ILDC will thereafter reimburse the ECIDA. Mr. Cappellino stated that the ILDC anticipates completing the master plan and GEIS by June of 2019.

Mr. Poloncarz noted that the ILDC voted to accept receipt of the ECIDA UDAG Grant money at the ILDC meeting which was just concluded prior to this meeting.

Ms. Gallagher requested if staff could prepare a separate accounting and financial report specific and unique to the Bethlehem Steel project. Mr. Cappellino confirmed that the ILDC would do so.

Mr. Poloncarz then moved and Ms. Gallagher seconded to approve of the grant request. Mr. Lipsitz called for the vote and the following resolution was unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (“AGENCY”) TO ENTER INTO A FUNDING AGREEMENT FOR CERTAIN MASTER PLANNING AND GENERIC ENVIRONMENTAL IMPACT STATEMENT PURPOSES WITH THE BUFFALO AND ERIE COUNTY INDUSTRIAL LAND DEVELOPMENT CORPORATION (“ILDC”) IN AN AMOUNT NOT TO EXCEED \$500,000 ON A REVOLVING BASIS FROM THE AGENCY’S U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT URBAN DEVELOPMENT ACTION GRANT (“UDAG”) REFLOW FUND

2018 Tax Incentive Induced Closing Schedule. Mr. Cappellino presented this report. Mr. Lipsitz directed that the report be received and filed.

Policy Committee Update. Mr. Lipsitz confirmed that no quorum was present at the Policy Committee and as such, no action was taken and there is no report to be provided to the members.

INDUCEMENT RESOLUTIONS

Michigan Broadway, LLC/ Nash Lofts, 163-167 Broadway/52, 56, 58, and 60 Nash, Buffalo, New York. Mr. Cappellino reviewed this proposed sales tax and mortgage recording tax abatement benefits project involving the adaptive reuse of the existing facility into 18 affordable apartments and offices as well as a full service restaurant and additional commercial space.

As a condition precedent of receiving financial assistance and a material term and condition established by the ECIDA in connection with its approval of the project, Mr. Cappellino noted that the Company must, subject to potential termination, modification and/or recapture of financial assistance, submit on at least an annual basis or as otherwise indicated below, through the conclusion of the later of two years following either (i) the construction completion date, or (ii) the termination of the Agent Agreement, a certification as so required by the ECIDA confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$5,622,107.00 (which represents the product of 85% multiplied by \$6,614,244.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – that there are at least 3 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
 - The number of current FTE employees in the then current year at the Facility; and
 - That the company has maintained and created FTE employment at the Facility equal to 6 FTE employees [representing the sum of the Baseline FTE plus the

product of 85% multiplied by 4 (being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company's application for Financial Assistance)]. In an effort to confirm and verify the Company's employment numbers, the Agency requires that, at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency's "Quarterly Employment Survey" form to be made available to the Company by the Agency.

- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency's Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency's Pay Equity Policy.
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency's Unpaid Real Property Tax Policy.

At this point and time, Mr. Cappellino introduced Mr. Carmina who spoke on behalf of the Company with respect to the Project.

Mr. Poloncarz spoke in favor of the Project and queried about the affordable housing unit component of the Project. Mr. Carmina responded that rents for the affordable housing units will be set at 90% of the AMI for units between 600-1,200 sq. ft. in size. Mr. Carmina confirmed that rents will be adjusted at affordable housing rates just as if this was a New York State Housing Finance Agency Assisted Project.

Ms. McDuffie asked why the Company did not seek New York State DHCR Housing Assistance. Mr. Carmina responded that the Company did seek DHCR assistance, however timing issues to obtain approvals would introduce too much delay with respect to construction activities and as such, the Company decided not to pursue DHCR assistance.

Sister Denise expressed her support for the project and thanked the Company for providing affordable housing units.

Ms. Benczkowski moved and Mr. Wingerter seconded to approve the Project as proposed. Mr. Lipsitz then called for the vote. Mr. Blue stated that he will be abstaining from voting on the Project. Mr. Lipsitz then called for the vote and the following resolution was unanimously approved.

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF MICHIGAN BROADWAY, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, 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 TOT 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 AND (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FIANANCING RELATED TO THE PROJECT; AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

Pierce Arrow Kanaka, LLC, 1685, 1695, 1721 Elmwood Avenue, Buffalo, New York.

Mr. Lesswing reviewed this proposed sales tax and mortgage recording tax abatement benefits project involving the adaptive reuse and renovation of the historic Pierce Arrow administration building and garage facility into approximately 107 loft style apartments, indoor and outdoor parking, and establishment of a small retail component.

As a condition precedent of receiving financial Assistance and as a material term and condition established by the ECIDA in connection with its approval of the Project, Mr. Lesswing noted that the Company must, subject to potential termination, modification, and/or recapture of Financial Assistance, must submit on an annual basis or as otherwise indicated below through the conclusion of the later of two years following either (i) the construction completion date; or (ii) the termination of the Agent Agreement, a certification as so required by the ECIDA confirming:

- (i) Investment Commitment – the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$29,354,750.00 (which represents the product of 85% multiplied by \$34,535,000.00, being the total project cost as stated in the Company’s application for Financial Assistance).
- (ii) Employment Commitment – the number of current FTE employees in the then current year at the Facility; and
 - that the Company has maintained and created FTE employment at the Facility equal to two (2) Full Time Equivalent (“FTE”) employees representing the product of 85% multiplied by three (3) (being the total number of new FTE employee positions as proposed to be created by the Company as stated in the Company’s application for Financial Assistance). In an effort to confirm and verify the Company’s employment numbers, the Agency requires that , at a minimum, the Company provide employment data to the Agency on a quarterly basis, said information to be provided on the Agency’s “Quarterly Employment Survey” form to be made available to the Company by the Agency.

- (iii) Local Labor Commitment – that the Company adheres to and complies with the Agency’s Local Labor Workforce Certification Policy on a quarterly basis during the construction period.
- (iv) Equal Pay Commitment – that the Company adheres to and complies with the Agency’s Pay Equity Policy
- (v) Unpaid Real Property Tax Policy Commitment – that the Company is compliant with the Agency’s Unpaid Real Property Tax Policy.

Mr. Lipsitz then introduced Mr. Romanowski who spoke on behalf of the Company with respect to the Project.

Ms. Gallagher spoke in favor of the project.

Mr. Poloncarz spoke in favor of the project and queried as to the future uses of the open space within the facility. Mr. Levi confirmed that the open space may be used for a restaurant or retail space or perhaps community space, offering amenities like yoga.

Mr. Wingerter spoke in favor of the project and about the size and amenities associated with the affordable housing units. Mr. Romanowski said the affordable housing units will be the same size as, and have the same amenities as, the market rate units.

Mr. Blue asked if utilities would be included within the rent. Mr. Levi responded that the facility will utilize geothermal heating and cooling and such costs will be inclusive within rent and the Company estimates the net savings associated with the geothermal mechanism will save tenants about 70% in costs associated with typical gas and electric systems.

Mr. Poloncarz moved and Sister Denise seconded to approve of the Project as proposed. Mr. Lipsitz then called for the vote and the following resolution was unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF PIERCE ARROW KANAKA, LLC, AND/OR INDIVIDUAL(S) OR AFFILIATE(S), SUBSIDIARY(IES), OR ENTITY(IES) FORMED OR TO BE FORMED ON ITS BEHALF (INDIVIDUALLY, AND/OR COLLECTIVELY, 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 TAXD EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE PROJECT AND (B) A MORTGAGE RECORDING TAX

EXECPTION BENEFIT FOR FINANCING RELATED TO THE PROJECT;
AND (vi) AUTHORIZING THE NEGOTIATION AND EXECUTION OF
LEASE AGREEMENT, LEASEBACK AGREEMENT, AN AGENT AND
FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED
DOCUMENTS

AMENDATORY INDUCEMENT RESOLUTIONS

Emerson Huron, LLC, 75 West Huron, Buffalo, New York. Mr. Cappellino presented the project noting that the request made by the Company is to increase the mortgage recording tax abatement benefit from \$180,000.00, as initially approved by the ECIDA on December 20, 2017, to \$225,750.00. Mr. Cappellino confirmed that the Company is requesting additional bank financing due to a decrease in anticipated equity financing. In addition, overall project costs have increased and as such, the ECIDA will need to modify the investment commitment term and condition to \$32,231,525.00.

Ms. Gallagher moved and Sister Denise seconded to approve of the amendment to the original Inducement Resolution. Mr. Lipsitz called for the vote, and the following resolution was unanimously approved:

AMENDATORY INDUCEMENT RESOLUTION OF THE ERIE COUNTY
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE APPROVAL
OF A REVISED MORTGAGE RECORDING TAX EXEMPTION BENEFIT

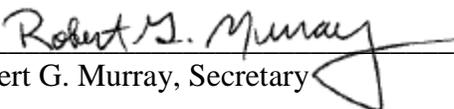
MANAGEMENT TEAM REPORT

Mr. Weathers informed members that the Agency intends to host an informal educational public briefing to allow staff to update those attending on activities occurring at the Bethlehem Steel site.

Mr. Weathers then provided members with a summary of, and discussed potential opportunities to take advantage of, the new Federal Opportunities Zone program.

There being no further business to discuss, Mr. Lipsitz adjourned the meeting at 10:01 a.m.

Dated: August 22, 2018



Robert G. Murray, Secretary