

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

- DATE AND PLACE:** March 22, 2017, at the Erie County Industrial Development Agency, 95 Perry Street, 5th Floor ESD Conference Room, Buffalo, New York 14203
- PRESENT:** Rev. Mark E. Blue, James F. Doherty, Hon. Joseph H. Emminger, Dottie Gallagher-Cohen, Hon. Joseph C. Lorigo, David L. Lowrey, Brenda W. McDuffie, John J. Mudie, Hon. Glenn R. Nellis, Hon. Mark C. Poloncarz, Hon. Darius G. Pridgen, Sister Denise Roche, Paul V. Vukelic and Hon. Barry A. Weinstein
- EXCUSED:** Hon. Diane Benczkowski, Hon. Byron W. Brown, Richard Lipsitz, Jr., and Louis Panzica
- OTHERS PRESENT:** Steve Weathers, Chief Executive Officer; John Cappellino, Executive Vice President, Mollie Profic, Treasurer; Karen M. Fiala, Assistant Treasurer; and Robert G. Murray, Secretary
- GUESTS:** Maria Whyte, Deputy County Executive; Andrew Federick, Erie County Senior Economic Development Specialist; Peter Krog and Paul Neureuter on behalf of 791 Washington Street, LLC

At 9:05 a.m., the Chair, Ms. McDuffie, called the meeting to order.

MINUTES

The minutes of the February 22, 2017 Meeting of the Members were presented. Mr. Nellis moved and Mr. Lowrey seconded to approve of the minutes. Ms. McDuffie called for the vote and the minutes were unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Financial Report. Ms. Profic reviewed the February 2017 Financial statements noting that the balance sheet shows that the IDA finished the month of February with total assets of approximately \$35.0M and net assets of approximately \$28.4M. She continued on to state that the monthly income statement shows an overall net loss of \$251,000 for February, that operating revenue was under budget by about \$28,000 due to the timing of administrative fees received, and that total operating expenses were above budget by \$41,000, due mainly to consultant costs related to the adaptive re-use study and Z7+ Net Zero Energy building project. Ms. Profic then stated that under Special Project Grants, there were costs in February related to the Transit Road bridge project (NYS DOT \$108k) and the Bethlehem Steel Rail Relocation project (\$35k, will be reimbursed). After depreciation, Ms. Profic noted that net income was \$251,000 for the month. On a year to date basis, Ms. Profic noted that the income statement shows revenue at \$765,000,

\$348,000 ahead of budget for the year, and expenses of \$523,000, about \$14,000 over budget. After the special project grants and depreciation, there is currently net income of \$102,000 on the year.

Finance and Audit Committee Update. Ms. Profic updated members on the most recently completed Finance and Audit Committee meeting commenting that the auditors, Lumsden and McCormick, reported on the draft 2016 Audited Financial Statements noting that the auditors expressed an “unmodified opinion” confirming that no uncorrected audit adjustments were noted, and confirmed that a “no material weaknesses” letter was issued, and no deficiencies in internal controls were noted. Ms. Profic also stated that the Committee reviewed and approved of the Public Authorities 2016 report, the Investment and Deposit Policy, the 2016 Investment Report, and readopted the Finance and Audit Committee Charter, and approved the Finance and Audit Committee Self-Evaluation and the Corporate Credit Card Policy. Ms. McDuffie asked that this report be received and filed.

At this point in time, Mr. Doherty joined the meeting.

2016 Audited Financial Statements. Ms. Profic reviewed the 2016 Audited Financial Statements. Ms. Profic then reviewed the Agency’s Financial Statements and the Buffalo Brownfield Redevelopment Fund Financial Statements for the period ending December 31, 2016 and the Auditor’s Independent Auditor’s Report as of December 31, 2016, noting that the Agency received an unmodified opinion from the auditing firm, Lumsden and McCormick, indicating that the financial statements present fairly, in all material respects, the financial positions of the Agency as of December 31, 2016 and 2015, and the changes in its financial position and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America. Ms. Profic commented that no proposed audit adjustments were noted.

Ms. Gallagher-Cohen expressed concern regarding Footnote No. 6, entitled “Economic Factors Impacting the Agency,” which described that the Agency relies extensively upon administrative fees to generate the majority of its annual income. The note continues on to state that as a result of current uncertain economic conditions and potential legislative/board actions, the Agency’s ability to generate the administrative fees necessary to support operations may be limited in the future. Ms. Gallagher-Cohen asked if the Finance and Audit Committee would be able to review the Agency’s administrative fee projections for the remainder of the year. Ms. Profic noted that staff has been having internal discussions and is preparing a report of this analysis. Mr. Weathers responded that this report should be completed by May of 2017. Ms. Gallagher-Cohen stated that she would look forward to receiving that report and reiterated her statement that she has concerns regarding the sources of and the reliability of the Agency’s projected revenues for the next several years.

Ms. McDuffie then asked for a motion to accept the 2016 Audited Financial Statements. Mr. Blue moved and Mr. Lowrey seconded, to approve of the Agency’s 2016 Audited Financial Statements. Ms. McDuffie called for the vote, and the Agency’s 2016 Audited Financial Statements were unanimously approved.

At this point in time, Mr. Pridgen joined the meeting.

2016 Investment Report. Ms. Profic reviewed this report and there being no further discussion, Mr. Nellis moved and Mr. Lowrey seconded, to approve of the 2016 Investment Report. Ms. McDuffie called for the vote, and the 2016 Investment Report was unanimously approved.

2017 Tax Incentive Induced/Closing Schedule/Estimated Real Property Tax Impact Report. Ms. Fiala presented this report. There being no questions, Ms. McDuffie asked that this report be received and filed.

Governance Committee Update. Ms. Boudreau gave members an update of the most recently completed Governance Committee meeting, noting that a quorum was not present for that meeting; however, staff did present certain materials, reports, charters, policies and guidelines to those who were present. Ms. Boudreau explained that the results of the ECIDA's 2016 Performance Measures, the Agency's Mission Statement and 2017 Performance Measures, the 2016 PAAA Annual Report, the Board of Directors' Self-Evaluation, and the 2016 Governance Committee's Self-Evaluation were all presented to those present. Ms. Boudreau also explained that the members reviewed the Governance Committee Charter, the Property Disposition Guidelines, Property Acquisition Policy, Board Member Compensation, Reimbursement & Attendance Policy, the ECIDA Employee Compensation Policy, the Travel, Conferences, Meals & Entertainment Policy, the Statement of the Duties and Responsibilities of the Board of Directors, the Statement of the Competencies & Personal Attributes Required of Board Members, and the Procurement Policy. Ms. Boudreau noted that no changes were recommended by staff or by members of the Committee and confirmed that the Board will be asked to review these policies at today's meeting. Ms. Boudreau also mentioned that at the request of Harris Beach, amendments to the Code of Ethics, Whistleblower Policy, and the Defense and Indemnification Policy were made to provide that Committee members who are not also members of the ECIDA/RDC/ILDC Board of Directors be covered by these policies.

Ms. Boudreau then reviewed the PARIS Report and the 2016 Local Labor Report, and updated members on Board member PAAA Training.

Ms. McDuffie commented that all Board Members should be reminded of their fiduciary duties to the Corporation and encouraged all Board Members to review their fiduciary duties and to undertake their fiduciary duties and responsibilities as a Board member.

At this point in time, Mr. Poloncarz joined the meeting.

REVIEW AND ADOPTION OF POLICIES, REPORTS AND COMMITTEE CHARTERS:

Ms. Gallagher-Cohen then moved to approve of the Amended Code of Ethics, Whistleblower Policy and Procedures, and the Defense and Indemnification Policy as modified to cover committee members. Mr. Vukelic seconded the motion. Ms. McDuffie then called for the vote and the Code of Ethics, Whistleblower Policy and Procedures, and the Defense and Indemnification Policy were all unanimously approved as amended.

2016 Mission Statement, Performance Measures and Results. Ms. Profic provided members with a summary of the 2016 Performance Measures and Results. Ms. Gallagher-Cohen

mentioned that there is no mention of job retention in the Mission Statement, and stated that she would like to amend the Mission Statement to add job retention. Ms. McDuffie stated that the Agency will be reviewing its 2017 Mission Statement and would look to amend the statement later this year.

2017 Mission Statement and Performance Measures. Ms. Profic noted that the Agency must approve of its 2017 Mission Statement and Performance Measures but also noted that the Agency can amend those statements and measures. Mr. Pridgen expressed some concern regarding one of the Agency's stated objectives being "to support the creation and growth of small, minority, women-owned businesses." In particular, Mr. Pridgen expressed concern over the metric being proposed by which to measure this objective. Ms. Profic noted that the metric presents a three year average, and is established merely as a goal. Mr. Pridgen expressed a concern that the metric should not be an average, but should be a real fixed number. Ms. Gallagher-Cohen stated that the number is a metric by which to measure performance, but, in addition, Ms. Gallagher-Cohen stated the Agency should establish a goal as well as a metric. Mr. Weathers explained the rationale for using a three year rolling average to establish a metric for measurement which can be used to set expectations. Ms. McDuffie noted that the goal is actually stated on Page 3 of the Board Materials and specifically states the goal to be "to support business formation, job growth, and economic expansion concentrating on undeserved markets."

Mr. Pridgen expressed concern again that the problem with the metric number is that if numbers decrease from year to year, the average three year figure will also decrease and stated that the goal should not be to meet the metric, and asked that more consideration be given to establishing a goal. Ms. Gallagher-Cohen noted that the Agency is holding clients to meeting specific goals and numbers, and the Agency should similarly be held to the same standard.

Mr. Cappellino stated that the Agency can approve of the 2016 Mission Statement and Performance Measures now, and can have the Governance Committee review and Board Members amend the Mission Statement and Performance Measures later in the year.

Ms. McDuffie welcomed all members to attend the upcoming Governance Committee meeting whereat the Committee will review the 2017 Mission Statement and Performance Measures and would encourage all members to participate.

Mr. Poloncarz expressed concern that the stated goal of encouraging international trade had a blank in place of what should be a specific dollar figure identifying the value of goods moved through the five locations in the Erie County Foreign Trade Zone. Mr. Cappellino stated that that number will not be known until the end of the month, and noted that this 2017 Mission Statement and Performance Measures document must be approved by the Board prior to the date upon which we anticipate receiving the Foreign Trade Zone numbers. Ms. McDuffie stated that we will note in the 2017 Mission Statement and Performance Measures that the Foreign Trade Zone investment number is undetermined as of now, and she will ask staff to resubmit the 2017 Mission Statement and Performance Measures when that number is finally determined.

Ms. Boudreau then reviewed the 2016 Public Authorities Report.

Mr. Blue then moved and Mr. Nellis seconded, to approve of the 2016 Mission Statement, Performance Measures and Results, the 2017 Mission Statement and Performance

Measures, to be amended later upon determination of the Foreign Trade Zone import number, and the 2016 Public Authorities Report. Ms. McDuffie called for the vote and the aforementioned statements and reports were unanimously approved.

RE-ADOPT POLICIES AND CHARTERS

Ms. Boudreau then reviewed the Investment & Deposit Policy, the Finance & Audit Committee Charter, the Governance Committee Charter, the Procurement Policy, the Property Disposition Guidelines, the Property Acquisition Policy, the Board Member Compensation, Reimbursement & Attendance Policy, the Employee Compensation Program, the Travel Conferences, Meals & Entertainment Policy, the Statement of Duties & Responsibilities of the Board of Directors, Statement of the Competencies & Personal Attributes Required of Board Members, and the Corporate Credit Card Policy noting that no changes or amendments were recommended by staff or Governance Committee members. Mr. Blue moved and Mr. Lorigo seconded, to approve of all of the aforementioned policies, charters and guidelines. Ms. McDuffie called for the vote and the aforementioned policies, charters and guidelines were all unanimously approved.

REPORTS/ACTION ITEMS/INFORMATION ITEMS

Policy Committee Update. Ms. McDuffie provided members with an update from the most recently completed Policy Committee meeting noting that all five projects on today's Agenda were approved and also noted that Policy Committee members were provided with an update from the City of Buffalo regarding their Affordable Housing Study. Ms. McDuffie directed that this report be received and filed.

INDUCEMENT RESOLUTIONS

128 Pearl Street, LLC, 128 Pearl Street, Buffalo, New York. Ms. Fiala reviewed this proposed sales tax and mortgage recording tax exemption benefits project involving the adaptive reuse of the existing facility involving the construction of seven apartments and approximately 950 sq. ft. of commercial office space. Ms. Fiala confirmed the retail component of the project represents 9% of the project cost and retail prohibitions, thus, do not apply.

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

- (i) Investment Commitment- the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$1,564,362.00 (which represents the product of 85% multiplied by \$1,840,427.00, being the total project cost as stated in the Company's application for Financial Assistance).

- (ii) Employment Commitment — that within two years following Project completion, the Company has maintained and created FTE employment at the Facility equal to one (1) FTE 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. Pridgen expressed his support for the project and asked for confirmation that every apartment is going to be a market rate apartment. Ms. Fiala said that every unit will be a market rate unit, however, the Company tried for two years to make this into an affordable housing project, however was unable to financially make this happen. Mr. Pridgen responded that he is disappointed that it is market rate only, stressed that it is important that the Agency have inclusionary housing projects, stated that he understands that it can be difficult for the numbers to work but again stated his disappointment that there is not even one single unit of affordable housing.

Ms. Gallagher-Cohen then moved to approve of the project and noted that this project should be the poster child for developing a difficult project and, in particular, noted that the developer did attempt to establish an affordable housing project, albeit unsuccessfully.

Mr. Poloncarz expressed his support for the project and also supported Mr. Pridgen's concerns, stating that Buffalo has long been a segregated city and also stated his concern that the City is now creating a situation that only a wealthy person can afford to live in Buffalo. Mr. Poloncarz stated that the Agency needs to encourage affordable housing and stated that if only the wealthy can live in Buffalo, we will all be much poorer for it.

Ms. Gallagher-Cohen noted that seven years ago the Agency established an adaptive reuse program to address the fact that the only housing available in the City was affordable housing. Ms. Gallagher-Cohen reminded members that developers are taking financial risk to rehabilitate existing structures to attract market rate tenants.

Mr. Weinstein seconded the motion to approve of the project.

Mr. Pridgen stated that if the Agency only hopes that a change will be made to permit more affordable housing, then such change will never happen. As the Ellicott District Representative, Mr. Pridgen confirmed that this is one of his gravest concerns and that we cannot

have a city that lacks diversity in color or income. To be clear, Mr. Pridgen stated that he doesn't think developers can do affordable housing without some help, and expressed his belief that the IDA has a role to help make this happen.

Ms. McDuffie stated that the Policy Committee is reviewing the Agency's Adaptive Reuse Policy and is awaiting the results of the City's Affordable Housing Study to further address this issue. Ms. McDuffie called for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE 128 PEARL, LLC (THE "COMPANY") PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF 128 PEARL, 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) 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, AND (B) 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, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

Moog, Inc., 400 Jamison Road, Elma, New York. Ms. Fiala reviewed this proposed real property tax and sales tax benefits project involving the construction of a new 95,000 sq. ft. addition to Moog's existing Aircraft Division's operations. Ms. Fiala explained that approximately 75-80% of the addition will be used for mechanical and electronic assembly and test facilities for military and commercial aircraft flight control products and confirmed that the remaining space will be utilized as mixed office space including engineering and manufacturing support and administrative functions.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with its approval of the project, Ms. Fiala noted that the Company must, subject to potential termination and/or modification and/or recapture of financial assistance, submit, on at least an annual basis or as otherwise indicated below, through the termination of the PILOT Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment- the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$27,710,000.00 (which represents the product of 85% multiplied by \$32,600,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 251 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 within two years after Project completion the Company has maintained and created FTE employment at the Facility equal to 287 FTE employees, being the sum of Baseline FTE and 36 [representing the product of 85% multiplied by 42 (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 in time, Mr. Weinstein left the meeting.

Ms. Gallagher-Cohen made a motion to approve the project. Mr. Lorigo seconded the motion. Ms. McDuffie called for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE FLEXO TRANSPARENT, LLC (THE "COMPANY") PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF MOOG, INC., 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) 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 AND (B) A PARTIAL ABATEMENT FROM REAL PROPERTY TAXES BENEFIT THROUGH THE PILOT AGREEMENT; 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 PROJECT AGREEMENT, AND RELATED DOCUMENTS

R & M Leasing, LLC, 155 Chandler Street, Buffalo, New York. Mr. Cappellino reviewed this proposed mortgage recording tax and sales tax exemption benefits project involving the adaptive reuse of the former Linde Air Manufacturing complex to serve as an incubator for Start-Up New York companies and to provide approximately 850,000 sq. ft. of commercial and manufacturing space. In addition, Mr. Cappellino noted that two apartments will be constructed within the existing facility. Mr. Cappellino also confirmed that ECIDA sales tax exemptions will only apply to the core and shell of the building.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with its approval of the project, Mr. Cappellino noted that the Company must, subject to potential termination and/or 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 the construction completion date or the termination of the Agent Agreement, a certification as so required by the Agency confirming:

- (i) Investment Commitment- the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$9,002,350.00 (which represents the product of 85% multiplied by \$10,591,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that there are at least 50 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, within two years following Project completion, the Company has maintained and created FTE employment at the Facility equal to 67 FTE employees [representing the sum of the Baseline FTE and 17,

with 17 being the product of 85% multiplied by 20 (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) 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. Poloncarz expressed his support of the project but queried as to which tenants or tenant will be providing the 50 existing jobs. Ms. Fiala confirmed that Utilant is an existing company and makes up the bulk of the existing jobs.

Ms. Gallagher-Cohen moved and Mr. Poloncarz seconded, to approve the proposed project. Ms. McDuffie called for the vote and the following resolutions were unanimously approved:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY THAT ACTION TO UNDERTAKE THE R & M LEASING LLC PROJECT WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF R & M LEASING, 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) 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, AND (B) 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, AN AGENT AND FINANCIAL ASSISTANCE PROJECT AGREEMENT, AND RELATED DOCUMENTS

AMENDATORY INDUCEMENT RESOLUTIONS

791 Washington Street, LLC, 791 Washington Street, Buffalo, New York. Mr. Cappellino confirmed that the Agency had already approved this project in August, 2016, however, since that point in time, the project has been modified to eliminate the Buffalo Culinary School component. Mr. Cappellino explained that additional apartment units will be constructed in the place of the Buffalo Culinary School. Mr. Cappellino further explained that the estimated sales tax benefit and employment has been reduced from an original estimate of sales tax savings of \$3,059,875.00 to \$2,750,825.00, and the original estimate of projected jobs to be created at 130 has been revised to 30. Mr. Cappellino also confirmed that the Agency has already made its required retail finding and that the County Executive has already confirmed the Agency's retailing finding as well.

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

- (i) Investment Commitment- the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$68,454,750.00 (which represents the product of 85% multiplied by \$80,535,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment - that within two years of Project completion, the Company has maintained and created FTE employment at the Facility equal to 25 full-time equivalent ("FTE") employees [the product of 85% multiplied by 30 (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. Pridgen commended the developer for taking on this very large project in the Ellicott District. Mr. Pridgen expressed concern about the time it will take the developer to actually complete the project, particularly because the developer is still waiting to hear whether it will be approved to construct the Buffalo Culinary School with respect to a second request for proposals being undertaken by the Buffalo City Schools. Mr. Peter Krog, on behalf of the Company, confirmed that the Company has responded to the second request for proposals from the City of Buffalo Schools to construct the Buffalo Culinary School, and stated that the Company has its heart in this project, and also confirmed that the project will go forward with or without the Buffalo Culinary School component. Mr. Krog also confirmed that the Company is working with lenders to secure financing for the project.

Mr. Pridgen questioned that if funding is not in place, if it is possible that the lender could approve the project without the need for Agency financial assistance. Mr. Cappellino responded that staff has reviewed the Company's proposed financing and confirmed that it is not likely that the financing gap can be closed with just bank financing.

Mr. Pridgen confirmed that the City of Buffalo Common Council has asked the developer to provide the Common Council with a presentation of the project and that to date, that presentation has yet to occur, and, as such, Mr. Pridgen expressed that he will not feel comfortable voting on this matter until the additional information is provided to the Common Council. As a result, he will be abstaining from voting on this project.

Sister Denise questioned as to whether the Agency should know what the project is before it is voted upon. Mr. Cappellino responded that the project as presented today will be the project, expressed that he is not sure of the likelihood as to whether the Company would win the request for proposals for a Buffalo Culinary School a second time.

Mr. Doherty moved to approve the project.

Mr. Blue asked if this project will have an affordable housing component. Mr. Cappellino responded that no affordable housing units are proposed but confirmed that the developer is talking with the New York State Department of Housing and Community Renewal on this effort.

Mr. Neureuter, on behalf of the Company, stated that after the Buffalo Culinary School pulled out of the original project, the Company tried to obtain low income housing tax credits from New York State and confirmed that it will be at least a one year process to find out if any tax credits can be awarded.

Ms. Gallagher-Cohen stated that this building should be received by the Agency with a red carpet, as it is an historic building, an eyesore, and also commented that the developer is seeking less financial assistance than originally proposed. Ms. Gallagher-Cohen stated that the

Agency should be thanking the developer for taking this project on, and expressed her support for the project.

Ms. McDuffie then called for the vote and the following resolution was unanimously approved, with Mr. Pridgen abstaining:

RESOLUTION OF THE ERIE COUNTY INDUSTRIAL DEVELOPMENT AGENCY: (i) ACCEPTING THE APPLICATION OF 791 WASHINGTON STREET, 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 TAX EXEMPTION BENEFIT FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION AND/OR RENOVATION, REHABILITATION AND EQUIPPING OF THE PROJECT, AND (B) A MORTGAGE RECORDING TAX EXEMPTION BENEFIT FOR FINANCING 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

Curtiss Buffalo, Inc., 204-216 Franklin Street, Buffalo, New York. Mr. Cappellino confirmed that the Agency had initially approved this project in June, 2014, and confirmed that the project is being modified to increase both the renovation and equipment budget by approximately \$4,400,000.00 to construct an additional 9,200 sq. ft. for an expanded rooftop area and sidewalk café. Mr. Cappellino confirmed that the only benefit being requested today is to provide an additional sales tax exemption benefit in the amount of \$466,250.00. Mr. Cappellino confirmed that the estimated sales tax benefit is being increased from \$575,000.00 as originally approved to a new amount of \$1,041,250.00, and the overall estimate of projected jobs is being increased from 30 as originally proposed, to 55 as currently proposed. Mr. Cappellino confirmed the Agency has already made the required retail finding and that the County Executive has already confirmed the Agency's retail finding.

As a condition precedent of receiving financial assistance and as a material term and condition established by the Agency in connection with its approval of the project, Mr. Cappellino noted that the Agency must amend its original Material Terms and Conditions, as follows, such that, subject to the potential termination and/or modification and/or recapture of financial assistance, the Company must submit, on at least an annual basis or as otherwise indicated below, through the conclusion of the later of two years following either the

construction completion date or the termination of the Agent Agreement, a certification, as so required by the Agency, confirming:

- (i) Investment Commitment. — the total investment actually made with respect to the Project at the time of Project completion equals or exceeds \$20,510,500.00 (which represents the product of 85% multiplied by \$24,130,000.00, being the total project cost as stated in the Company's application for Financial Assistance).
- (ii) Employment Commitment — the number of current full-time equivalent ("FTE") employees in the then current year at the Facility and that within two years of Project completion, the Company has created FTE employment at the Facility equal to 46 FTE employees representing the product of 85% multiplied by 55 (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. Poloncarz moved to approve of the project, noted that the Company proactively reached out several months ago to inform the Agency that its projected expenditures would be increasing, in contrast to what the Agency has seen in the past with respect to several other companies, and also mentioned that the Company is increasing its job creation number. Ms. Gallagher-Cohen seconded the motion to approve the project. Ms. McDuffie 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 CURTISS BUFFALO, INC., 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 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 FINANCING 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

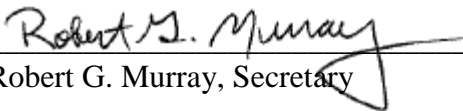
MANAGEMENT TEAM REPORTS

Mr. Weathers informed members that the Agency has, to date, received all outstanding sales tax recapture dollars with respect to all projects for which recapture has been requested.

Ms. Whyte provided an update to members regarding the Buffalo and Erie County Industrial Land Development Corporation's purchase of the Bethlehem Steel property.

There being no further business to discuss, Ms. McDuffie adjourned the meeting at 10:27 a.m.

Dated: March 22, 2017


Robert G. Murray, Secretary