

AUTHORIZING RESOLUTION

(Gateway GS, LLC Project)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, January 13, 2022.

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

Resolution No. 01/2022 - 04

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") (i) AUTHORIZING AN INCREASE IN THE FINANCIAL ASSISTANCE (AS DESCRIBED BELOW) TO BE PROVIDED BY THE AGENCY TO THE COMPANY, (ii) RATIFYING AND CONFIRMING THE FINDINGS OF THE AGENCY MADE IN THE RESOLUTIONS PREVIOUSLY ADOPTED BY THE AGENCY ON JULY 1, 2021, AND AUGUST 5, 2021, AND (iii) IF NECESSARY, AUTHORIZING THE EXECUTION AND DELIVERY OF 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 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (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 industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, pursuant to resolutions adopted on July 1, 2021 (the "Initial Resolution") and August 5, 2021 (the "Final Resolution"), the Agency authorized certain Financial Assistance (as defined in the Final Resolution) with respect to a certain project (the "Project") to be undertaken by **GATEWAY GS, LLC** (the "Company"), as agent of the Agency, consisting of: (i) the acquisition by the Agency of a leasehold or other interest in certain real property located at 8003 Call Parkway, Town of Batavia, Genesee County, New York (the "Land"); (ii) the planning, design, construction and equipping upon the Land of an approximately 27,000 square foot warehouse/distribution center for a single logistics-distribution tenant, together with related infrastructure improvements, curbing, roadways, parking, landscaping and other improvements (collectively, the "Improvements"); and (iii) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and, together with the Land and the Improvements, the "Facility"); and

WHEREAS, in connection with the Project, the Agency and the Company entered into certain documents consisting of: (i) a certain Project Agreement, dated as of September 29, 2021 (the "Project Agreement"), (ii) a certain Lease Agreement, dated as of September 1, 2021, a

memorandum of which was recorded with the Genesee County Clerk's Office on October 4, 2021 as Instrument Number DE2021-1549 (the "Lease Agreement"), (iii) a certain Leaseback Agreement, dated as of September 1, 2021, a memorandum of which was recorded with the Genesee County Clerk's Office on October 4, 2021 as Instrument Number DE2021-1550 (the "Leaseback Agreement"), (iv) a certain Tax Agreement, dated as of September 1, 2021 (the "Tax Agreement"), (v) a certain Environmental Compliance and Indemnification Agreement, dated as of September 1, 2021 (the "Environmental Compliance Agreement") and (vi) related documents (collectively, the "Agency Documents"); and

WHEREAS, the Company informed the Agency that the Project would be amended (as so amended, the "Amended Project") as set forth below:

(i) the acquisition by the Agency of a leasehold or other interest in certain real property located at 8003 Call Parkway, Town of Batavia, Genesee County, New York (the "Land"); (ii) the planning, design, construction and equipping upon the Land of an approximately 33,600 square foot warehouse/distribution center for a single logistics-distribution tenant, together with related infrastructure improvements, curbing, roadways, parking, landscaping and other improvements (collectively, the "Improvements"); and (iii) the acquisition by the Company in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and, together with the Land and the Improvements, the "Facility").

WHEREAS, the Company further informed the Agency that: (i) the value of goods and services relating to the Project that will be subject to New York State and local sales and use tax will be in an amount of up to **\$1,758,000.00** (such amount being an increase of \$396,000.00), which will result in New York State and local sales and use tax exemption benefits not to exceed **\$140,640.00** (such amount being an increase of \$31,680.00 and (ii) the maximum principal mortgage amount necessary to undertake the Project has increased to **\$2,660,000.00** (such amount being an increase of \$660,000.00), which will result in an exemption from mortgage recording taxes imposed on the financing related to the Project of **\$26,600.00** (such amount being an increase of \$6,600.00); and

WHEREAS, the Agency desires to adopt a resolution (i) authorizing the Company to make purchases of goods and services relating to the Project in the amount of up to **\$1,758,000.00**, which will result in local sales and use tax exemption benefits not to exceed **\$140,640.00**, (ii) authorizing the Company to execute, deliver and record a mortgage and related documents in the maximum principal amount not to exceed **\$2,660,000.00**, which will result in an exemption from mortgage recording taxes of **\$26,600.00**, (iii) ratifying and confirming the findings made by the Agency in the Initial Resolution and Final Resolution adopted, and (iv) if necessary, authorizing the execution and delivery of related documents.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. Based upon representations and warranties made by the Company, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project, that would otherwise be subject to New York State and local sales and use tax in an amount up to **\$1,758,000.00**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$140,640.00**. The Agency agrees to 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, 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 sales and use tax exemption 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; or (iv) the sales and use tax exemption 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, shall (i) cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands.

Section 2. The President/CEO, Chair, Vice Chair and/or Senior Vice President of Operations of the Agency are hereby authorized, on behalf of the Agency, to execute, deliver and record a mortgage, securing an aggregate principal amount of up to **\$2,660,000.00**, and any 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") to assist with the undertaking of the Project, the acquisition of the Facility and/or the finance or re-finance the Facility or equipment and other personal property and related transactional costs; and, where appropriate, the Secretary or 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 President/CEO, Chair, Vice Chair and/or Senior Vice President of Operations of the Agency shall approve, the execution thereof by the President/CEO, Chair, Vice Chair and/or Senior Vice President of Operations 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 3. Unless amended by the terms hereof, Agency hereby ratifies, confirms and reaffirms the findings made in the Initial Resolution and Final Resolution and hereby re-approves the Project, as amended, and the Financial Assistance.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 5. These Resolutions shall take effect immediately upon adoption.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Peter Zeliff	[X]	[]	[]	[]
Matthew Gray	[X]	[]	[]	[]
Paul Battaglia	[X]	[]	[]	[]
Craig Yunker	[X]	[]	[]	[]
Todd Bender	[]	[]	[X]	[]
Chandy Kemp	[]	[]	[X]	[]
Marianne Clattenburg	[X]	[]	[]	[]

The resolutions were thereupon duly adopted.

SECRETARY'S CERTIFICATION

(Gateway GS, LLC Project)

STATE OF NEW YORK)
COUNTY OF GENESEE) SS.:

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

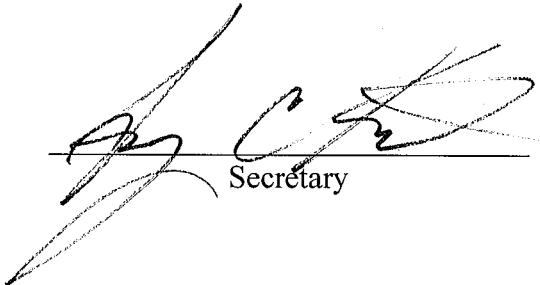
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on January 13, 2022, with the original thereof on file in the offices of the Agency, 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 related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said 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 such 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 said Agency this 13th day of January, 2022.


Secretary

