

FINAL RESOLUTION
(Ellicott Station Development LLC Project)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, November 1, 2018.

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

Resolution No. 11/2018 - 01

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (i) MAKING A DETERMINATION WITH RESPECT TO THE ELLICOTT STATION DEVELOPMENT LLC PROJECT PURSUANT TO SEQRA (AS HEREINAFTER DEFINED), (ii) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AN AGENT, FINANCIAL ASSISTANCE AND PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, TAX AGREEMENT, TAX AGREEMENT MORTGAGE, IF NECESSARY, AND RELATED DOCUMENTS; (iii) AUTHORIZING FINANCIAL ASSISTANCE TO ELLICOTT STATION DEVELOPMENT LLC (THE "COMPANY") IN THE FORM OF (A) A SALES AND USE TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION, RENOVATION AND EQUIPPING OF THE PROJECT, (B) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A TAX AGREEMENT, AND (C) A MORTGAGE RECORDING TAX EXEMPTION AS PERMITTED BY NEW YORK STATE LAW; AND (iv) AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE 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 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, **ELLICOTT STATION DEVELOPMENT LLC** (the "Company"), previously submitted an application (the "Application") requesting the Agency's assistance with a certain project (the "Original Project") consisting of: (A) the acquisition or retention by the Agency of a leasehold interest in certain land located at 40-52 Ellicott Street, City of Batavia, Genesee County, New York (being more particularly described as tax map identification number 84.015-1-2) and at 56-70 Ellicott Street, City of Batavia, Genesee County, New York (being more particularly described as tax map identification number 84.015-1-5) (the "Land") and the existing improvements located thereon, consisting principally of a warehouse and a one-story building (the

"Existing Improvements"), (B) (i) the renovation and equipping of approximately 16,965 square-feet of the Existing Improvements into a locally themed restaurant and production brew-house facility and (ii) the construction and equipping on the Land of an approximately 64,300 square-foot, four-story mixed-use building, containing approximately 16,000 square-feet of commercial office space and forty-eight (48) market-rate apartments and (iii) related improvements and infrastructure (the "Original Improvements"), and (C) the acquisition by the Company in and around the Original Improvements of certain items of machinery, equipment and other tangible personal property; and

WHEREAS, by resolution adopted on August 3, 2018, the Agency, among other things, (i) appointed the Company as its agent to undertake the Original Project and (ii) authorized financial assistance to the Company with respect to the Original Project in the form of a sales and use tax exemption, a real property tax abatement and a mortgage recording tax exemption as permitted by New York State Law (collectively, the "Original Financial Assistance");

WHEREAS, on or about September 26, 2018, the Company submitted an application supplementing, modifying and amending the Application (the "Supplemental Application") and requesting the Agency's assistance with modifications to the Original Project (as so modified and supplemented, the "Project") consisting of: (A) (i) the renovation and equipping of approximately 16,965 square-feet of the Existing Improvements into a locally themed restaurant and production brew-house facility, event space, and outdoor beer garden and (ii) the construction and equipping on the Land of an approximately 65,296 square-foot, five-story building, containing approximately fifty-five (55) mixed-income multifamily residential apartments with covered ground-floor parking and on-site playground, and (iii) related improvements and infrastructure (collectively, the "Improvements"); (C) the construction and equipping on the first floor of the Improvements of approximately 16,850 square-feet of Class A multi-tenant commercial office building; and (D) the acquisition by the Company in and around the Improvements 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"); and

WHEREAS, by resolution adopted on October 4, 2018 (the "Supplemental Initial Resolution"), the Agency (i) accepted the Supplemental Application, (ii) authorized a public hearing (the "Public Hearing") with respect to the Project, and (iii) described the Financial Assistance (as hereinafter defined) being contemplated for the benefit of the Company with respect to the Project; and

WHEREAS, pursuant to Section 859-a of the Act, on Tuesday, October 23, 2018, at 4:00 p.m., local time, at Batavia City Hall, City Council Board Room, One Batavia City Centre, Batavia, New York 14020, the Agency held a Public Hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency, whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the Notice Letter, combined "Notice of Public Hearing and Notice of Deviation", Affidavit of Publication of *The Daily News* and Minutes of the Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, pursuant to the combined "Notice of Public Hearing and Notice of Deviation" dated October 10, 2018, and delivered to the affected tax jurisdictions, the Agency delivered notice

of proposed deviation (the "Deviation") from the Agency's Uniform Tax Exemption Policy ("UTEP") regarding the proposed payment-in-lieu-of-tax agreement (the "Tax Agreement") being considered by the Agency; and

WHEREAS, the proposed Tax Agreement deviates from the UTEP as a result of the contemplated thirty (30) year tax abatement term with respect to the mixed-income multifamily residential apartments; and

WHEREAS, the Agency shall find, prior to providing any Financial Assistance to the Project, (i) that the Project is located in a "highly distressed area" (as such term is defined in Section 854(18) of the Act, a "Highly Distressed Area"), and (ii) after the Public Hearing 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

WHEREAS, the Company has represented in the Supplemental Application to the Agency that the Project is located in a Highly Distressed Area; and

WHEREAS, pursuant to that certain Batavia Pathway to Prosperity Capital and Reinvestment Fund Agreement dated February 22, 2016, by and between the City of Batavia, the County of Genesee, the Batavia City School District, the Agency and the Batavia Development Corporation (the "BP2 Agreement"), the Agency will determine that funds from the Batavia Pathway to Prosperity Capital and Reinvestment Fund (the "BP2 Fund") will be allocated and disbursed in connection with the Project; and

WHEREAS, under the BP2 Agreement the Batavia Development Corporation has issued a Certificate of Consistency (as defined in the BP2 Agreement) signed and dated as of October 24, 2018 and the Agency has approved as of its board meeting of November 1, 2018 that it will disburse monies from the BP2 Fund up to \$1,369,988 consistent with the Certificate of Consistency, as administrator of such account, to the Company or Agent in support of the Project; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as agent of the Agency for the purpose of undertaking the Project pursuant to an agent, financial assistance and project agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), a leaseback agreement (the "Leaseback Agreement"), the Tax Agreement, a tax agreement mortgage (the "Tax Agreement Mortgage"), if necessary, and related documents with the Company, (iii) take title to or a leasehold interest in the Land, Existing Improvements, Improvements, Equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and Tax Agreement have been negotiated), and (iv) provide Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project, (b) a real property tax abatement structured through the Tax Agreement, and (c) a mortgage recording tax exemption as authorized by New York State Law (collectively, the "Financial Assistance"); and

WHEREAS, pursuant to Article 18-A of the General Municipal Law the Agency desires to adopt a resolution describing the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to the Project; and

WHEREAS, pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto at 6 N.Y.C.R.R. Part 617, as amended (collectively referred to as "SEQRA"), the Agency must satisfy the applicable requirements set forth in SEQRA, as necessary, prior to making a final determination whether to undertake the Project; and

WHEREAS, the Agent Agreement, the Lease Agreement, the Leaseback Agreement, the Tax Agreement and related documents have been negotiated and are presented at this meeting for approval and execution.

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. 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, the Agency hereby finds and determines that:

- (A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and
- (B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and 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 employment opportunities in Genesee County and otherwise furthering the purposes of the Agency as set forth in the Act; and
- (E) The Project is located in a Highly Distressed Area; and
- (F) The Project will serve the public purposes of the Act by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in New York State; and
- (G) The Project will not result in the removal of a facility or 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

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

(H) The City of Batavia Planning and Development Committee (the "Planning Board") has conducted a review of the Project pursuant to SEQRA and (i) classified the Original Project as an Unlisted Action pursuant to SEQRA and conducted an uncoordinated review and (ii) issued a Negative Declaration on July 20, 2017, thereby determining that the Original Project does not pose a potential significant adverse environmental impact. On August 21, 2018, the Planning Board determined that the Negative Declaration issued on July 20, 2017 with respect to the Original Project was acceptable with respect to the Project (as modified) (the "August 21, 2018 Acknowledgment"). The Agency, having reviewed the materials presented by the Company, including but not limited to, the Full Environmental Assessment Form, dated May 25, 2017, the Negative Declaration issued on July 20, 2017 and the August 21, 2018 Acknowledgment, determines that the Project does not pose a potential significant adverse environmental impact and thus ratifies the Negative Declaration previously issued by the City of Batavia Planning and Development Committee pursuant to 6 N.Y.C.R.R. § 617.7. A copy of the Full Environmental Assessment Form and Negative Declaration issued by the City of Batavia Planning and Development Committee are attached hereto as **Exhibit B**.

(I) The Tax Agreement between the Company and the Agency, in form satisfactory to the Agency and Agency Counsel, will be an effective instrument whereby the Agency and the Company set forth the terms and conditions of their agreement regarding the Company's payments in lieu of real property taxes. Upon consideration of the Deviation, as outlined within the combined "Notice of Public Hearing and Notice of Deviation", notice contained therein issued to the affected tax jurisdictions, and upon consideration of the Project and comments received from the affected tax jurisdictions, the Agency hereby authorizes the undertaking of the Deviation based upon the following factors: (1) The Project will have a positive financial and employment impact on Genesee County and downtown Batavia; (2) The Project will benefit affected tax jurisdictions and the community with increased tax revenues and other development projects that will be undertaken as a result of the Project; (3) The Company has represented that approximately 68 new full-time and approximately 145-174 temporary construction jobs will be created as a result of the Project; (4) The Project will offer needed housing stock as part of its workforce development and overall economic development plan for Genesee County; (5) The Company has represented that it will invest approximately \$22,500,000 to construct and equip the Project; and (6) The Company may pursue the Project in other surrounding states or municipalities if the proposed Tax Agreement is not approved.

(J) The Project will receive an allocation of BP2 Funds.

Section 2. The Public Hearing held by the Agency on Tuesday, October 23, 2018, at 4:00 p.m., local time, at Batavia City Hall, City Council Board Room, One Batavia City Centre, Batavia, New York 14020, concerning the Project and the Financial Assistance was duly held in accordance with the Act, including but not limited to the giving of at least ten (10) days published

notice of the Public Hearing (such notice also provided to the Chief Executive Officer of each affected tax jurisdiction) and affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project.

Section 3. The Agency is hereby authorized to provide the Financial Assistance to the Company in the form of (a) a sales and use tax exemption for purchases and rentals related to the acquisition, construction, reconstruction, renovation and equipping of the Project, (b) a real property tax abatement through the Tax Agreement, and (c) a mortgage recording tax exemption as authorized by New York State law.

Section 4. Based upon representations and warranties made by the Company in the Application, 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 **\$13,504,719**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$1,080,378**. The Agency agrees to consider any requests by the Company for increase 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 Act, 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 5. Subject to the Company executing the Agent Agreement and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, reconstruct, renovate 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

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 Agent Agreement shall expire on **December 31, 2020** (*unless extended for good cause by the President/CEO of the Agency*) if the Lease Agreement, Leaseback Agreement and Tax Agreement contemplated have not been executed and delivered.

Section 6. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized, on behalf of the Agency, to negotiate and enter into (A) the Agent Agreement, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company, (D) the Tax Agreement, and (E) the Tax Agreement Mortgage; *provided, that*, (i) the rental payments under the Leaseback Agreement 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; (ii) the terms of the Tax Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with; and (iii) pursuant to Section 862(2)(c) of the Act, prior to providing the Financial Assistance, the Agency has received the Chair of the County of Genesee, New York Legislature's confirmation that the Agency's undertaking of the Project will serve the public purposes of the Act by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in the State.

Section 7. The Agency is hereby authorized to disburse funds from the BP2 Fund, pursuant to the terms of the BP2 Agreement, in support of the Project. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized, on behalf of the Agency, to do all acts and things required and to execute and deliver all such certificates, instruments and documents related to the payment, management, allocation and disbursement of BP2 Funds to the Company in connection with the Project.

Section 8. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized, on behalf of the Agency, to 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 any Lender identified by the Company (the "Lender") in such forms as approved by counsel to the Agency up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, with the Agent Agreement, Lease Agreement, Leaseback Agreement and Tax Agreement, collectively called the "Agency Documents"); 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 Chairman, Vice Chairman or Executive Director of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, President/CEO 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 9. 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 10. 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:

	Yea	Nay	Abstain	Absent
Paul Battaglia	[X]	[]	[]	[]
Peter Zeliff	[]	[]	[]	[X]
Craig Yunker	[]	[]	[]	[X]
Matthew Gray	[X]	[]	[]	[]
Todd Bender	[X]	[]	[]	[]
Andrew Young	[X]	[]	[]	[]
Amy Vanderhoof	[X]	[]	[]	[]

The resolutions were thereupon duly adopted.

SECRETARY'S CERTIFICATION
(Ellicott Station Development 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:

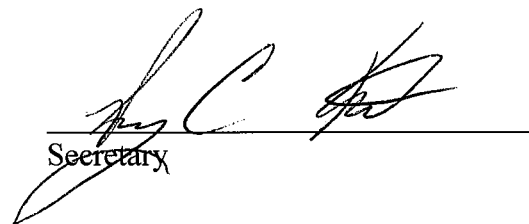
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on November 1, 2018, with the original thereof on file in my office, 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 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 1 day of November, 2018.



Secretary