

**FINAL RESOLUTION**  
*(V.J. Gautieri Constructors, Inc. Project)*

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, March 5, 2020.

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

Resolution No. 03/2020 - 02

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") (i) ACKNOWLEDGING THE PUBLIC HEARING HELD BY THE AGENCY ON MARCH 3, 2020, WITH RESPECT TO THE V.J. GAUTIERI CONSTRUCTORS, INC. (THE "COMPANY") PROJECT (AS FURTHER DESCRIBED BELOW); (ii) APPOINTING THE COMPANY AS AGENT OF THE AGENCY; (iii) AUTHORIZING 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, AND (b) A MORTGAGE RECORDING TAX EXEMPTION AS PERMITTED BY NEW YORK STATE LAW; AND (iv) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF A PROJECT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, MORTGAGE AND RELATED DOCUMENTS WITH RESPECT TO THE PROJECT.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "State"), 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, **V.J. GAUTIERI CONSTRUCTORS, INC.**, for itself or on behalf of an entity formed or to be formed by it or on its behalf (the "Company"), has submitted an application (the "Application") to the Agency, a copy of which is on file with the Agency, requesting the Agency's assistance with respect to a certain project (the "Project"), consisting of: (A) the acquisition by the Agency of a leasehold or other interest in certain property located at 45-47 Ellicott Street, City of Batavia, Genesee County, New York (the "Land") and the existing building located thereon (the "Existing Improvements"); (B)(i) the reconstruction, renovation, refurbishment and redevelopment of (a) a vanilla interior space on the first floor of the Existing Improvements for lease to commercial tenants and (b) ten (10) apartments on the second floor of the Existing Improvements, and (ii) the general repair and rehabilitation of the exterior of the Existing Improvements (collectively, the "Improvements"); and (C) the acquisition by the

Company in and around the Existing Improvements and the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment"; and, together with the Land, the Existing Improvements and the Improvements, the "Facility"); and

WHEREAS, pursuant to Article 18-A of the Act the Agency desires to adopt a resolution approving the Project and the Financial Assistance (as defined below) that the Agency is contemplating with respect to 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 a project agreement (the "Project Agreement"), (ii) negotiate and enter into a lease agreement (the "Lease Agreement"), a leaseback agreement (the "Leaseback Agreement") and related documents with the Company, (iii) take or retain title to or a leasehold interest in the Land, the Improvements, the Equipment and personal property constituting the Project (once the Lease Agreement and the Leaseback 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 and equipping of the Project, and (b) an exemption from the mortgage recording tax as authorized by the laws of the State for financing related to the Project (collectively, the "Financial Assistance"); and

WHEREAS, on February 6, 2020, the Agency adopted a resolution (the "Initial Resolution"), among other things, (i) accepting the Application, (ii) directing that a public hearing be held, and (iii) making a determination 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, "SEQRA"); and

WHEREAS, pursuant to Section 859-a of the Act, on Tuesday, March 3, 2020, at 4:15 p.m., local time, at Batavia City Hall, Community Room, One Batavia City Centre, Batavia, New York, the Agency held a public hearing with respect to the Project and the proposed Financial Assistance being contemplated by the Agency (the "Public Hearing"), whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views; a copy of the Notice of Public Hearing published in *The Batavia Daily News*, the affidavit of publication of such newspaper, and Minutes of the Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, the Project Agreement, the Lease Agreement, the Leaseback Agreement and related documents have been negotiated and will be presented to the Agency for execution subject to the approval of this resolution.

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 Public Hearing held by the Agency on March 3, 2020, 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 being provided to the Chief Executive Officer of each affected tax jurisdiction),

affording interested parties a reasonable opportunity, both orally and in writing, to present their views with respect to the Project.

Section 2. Based upon representations made by the Company in the Application, the Agency hereby finds that the Project is located contiguous to an area designated as a "highly distressed area" as defined in Section 862(b)(ii) of the Act.

Section 3. The Agency is hereby authorized to provide to the Company the Financial Assistance 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, and (b) a mortgage recording tax exemption as permitted by 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 State and local sales and use tax in an amount up to **\$1,380,000**, which result in State and local sales and use tax exemption benefits ("Sales and Use Tax Exemption Benefits") not to exceed **\$110,400**. The Agency agrees to consider any requests by the Company for an 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.

Section 5. 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 6. Subject to the Company executing the Project 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 or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; *provided, however*, the Project Agreement shall expire on **March 31, 2021** (unless extended for good cause by the President/CEO of the Agency) if the Lease Agreement, the Leaseback Agreement and the Tax Agreement contemplated have not been executed and delivered

Section 7. The Agency is hereby authorized to provide the Company with an exemption from mortgage recording taxes as permitted by New York State law in an amount not to exceed Twenty Thousand and 00/100 Dollars (**\$20,000**).

Section 8. 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 negotiate and enter into (A) the Project Agreement, (B) the Lease Agreement, pursuant to which the Company leases the Project to the Agency, and (C) the related Leaseback Agreement, pursuant to which the Agency leases its interest in the Project back to the Company; *provided, however*, 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.

Section 9. 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 any mortgage, 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") (collectively, the "Mortgage") necessary to undertake the Project, acquire the Facility and/or finance or refinance the Facility or equipment and other personal property and related transactional costs (hereinafter, with the Project Agreement, Lease Agreement, Leaseback Agreement and the Mortgage, 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 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 10. 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 11. 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>
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**  
*(V.J. Gautieri Constructors, Inc. 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:

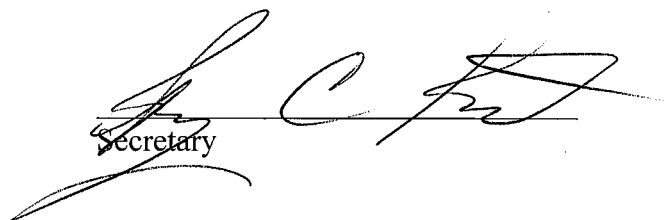
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on March 5, 2020, with the original thereof on file in the Agency's 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 5<sup>th</sup> day of March, 2020.

  
Secretary