

AUTHORIZING RESOLUTION

(Ellicott Station LLC and Ellicott Station Commercial LLC Projects)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, October 28, 2021.

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

Resolution No. 10/2021 - 01

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") AUTHORIZING (i) THE EXECUTION AND DELIVERY OF AN UP TO \$26,250,850.00 AGGREGATE PRINCIPAL AMOUNT MORTGAGE FOR THE ELLICOTT STATION LLC PROJECT AND ELLICOTT STATION COMMERCIAL LLC PROJECT, (ii) THE AGENCY TO CONSENT TO THE GRANTING OF RECIPROCAL EASEMENTS BY ELLICOTT STATION AND ELLICOTT STATION COMMERCIAL (EACH DEFINED BELOW) AND TO EXECUTE ALL NECESSARY DOCUMENTS IN CONNECTION THEREWITH, AND (iii) THE RATIFICATION OF CERTAIN TERMS OF CERTAIN TAX AGREEMENTS (AS FURTHER DESCRIBED BELOW) RELATING TO THE ELLICOTT STATION LLC PROJECT AND ELLICOTT STATION COMMERCIAL LLC PROJECT.

WHEREAS, by resolution adopted by the GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (the "Agency") on June 4, 2020 (the "Resolution"), the Agency authorized the execution of certain documents with respect to the Residential Project (as defined below), including (i) that certain Project Agreement, dated July 21, 2021 (the "Residential Project Agreement"), by and between Ellicott Station LLC ("Ellicott Station") and the Agency; (ii) that certain Lease Agreement, dated as of July 1, 2021 (the "Residential Lease") by and between Ellicott Station and the Agency, a Memorandum of which was recorded in the Genesee County Clerk's Office on July 29, 2021 as Instrument No. DE2021-1134; (iii) that certain Leaseback Agreement, dated as of July 1, 2021 (the "Residential Leaseback"), by and between Ellicott Station and the Agency, a Memorandum of which was recorded in the Genesee County Clerk's Office on July 29, 2021 as Instrument No. DE2021-1135; (iv) that certain Tax Agreement, dated as of July 1, 2021 (the "Residential PILOT"), by and between Ellicott Station and the Agency; and (v) related documents (collectively, "Residential Project Documents"); and

WHEREAS, pursuant to the Resolution, the Agency also authorized the execution of certain documents with respect to the Commercial Project (as defined below), including (i) that certain Project Agreement, dated July 21, 2021 (the "Commercial Project Agreement"), by and between Ellicott Station Commercial LLC ("Ellicott Station Commercial") and the Agency; (ii) that certain Lease Agreement, dated as of July 1, 2021 (the "Commercial Lease") by and

between Ellicott Station Commercial and the Agency, a Memorandum of which was recorded in the Genesee County Clerk's Office on July 29, 2021 as Instrument No. DE2021-1138; (iii) that certain Leaseback Agreement, dated as of July 1, 2021 (the "Commercial Leaseback"), by and between Ellicott Station Commercial and the Agency, a Memorandum of which was recorded in the Genesee County Clerk's Office on July 29, 2021 as Instrument No. DE2021-1139; (iv) that certain Tax Agreement, dated as of July 1, 2021 (the "Commercial PILOT"), by and between Ellicott Station Commercial and the Agency; and (v) related documents (collectively, "Commercial Project Documents"); and

WHEREAS, pursuant to the Residential Project Documents, the Agency provided financial assistance to the Company in the form of (a) a sales tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) a partial real property tax abatement through the Tax Agreement, and (c) a mortgage recording tax exemption for the financing related to the Project (collectively, the "Residential Financial Assistance"); and

WHEREAS, pursuant to the Commercial Project Documents, the Agency provided financial assistance to the Company in the form of (a) a sales tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) a partial real property tax abatement through the Tax Agreement, and (c) a mortgage recording tax exemption for the financing related to the Project (collectively, the "Commercial Financial Assistance"); and

WHEREAS, the Residential Project consisted of: (i) the acquisition by the Agency of a leasehold or other interest in certain land located at 56 Ellicott Street (to be known as 50 Ellicott Street), City of Batavia, Genesee County, New York (being more particularly described as tax map identification number 84.015-1-2.12) (the "Land") and the existing improvements located thereon, consisting principally of one (1) abandoned building (the "Existing Improvements"); (ii) the abatement and demolition of one or more Existing Improvements; (iii) the new construction of an approximately 55-unit workforce housing apartment building (with ground floor parking), all of which will be targeted to households with incomes at or below sixty percent (60%) of Area Median Income (collectively, the "Improvements"); and (iv) 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, the Existing Improvements and the Improvements, the "Residential Facility"); and

WHEREAS, the Commercial Project consisted of: (i) the acquisition by the Agency of a leasehold or other interest in certain land located at 40-52 and 70 Ellicott Street (to be known as 40 and 56 Ellicott Street, respectively), City of Batavia, Genesee County, New York (being more particularly described as tax map identification numbers 84.015-1-2.11 and 84.015-1-2.13, respectively) (the "Land") and the existing improvements located thereon, consisting principally of two (2) abandoned buildings (the "Existing Improvements"); (ii) the abatement and demolition of one or more Existing Improvements; (iii) the new construction of a brewery and restaurant/beer garden (collectively, the "Improvements"); and (iv) 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, the Existing Improvements and the Improvements, the "Commercial Facility"); and

WHEREAS, the Agency, pursuant to its resolution dated July 1, 2021, previously authorized the Agency to execute and deliver certain mortgages in the maximum principal amount of \$20,000,000.00; and

WHEREAS, due to complications stemming from the COVID-19 pandemic, Ellicott Station and Ellicott Station Commercial have requested that the Agency provide a mortgage recording tax exemption upon the recording of an \$26,250,850.00 aggregate principal amount mortgage (the "Mortgage"); and

WHEREAS, Ellicott Station and Ellicott Station Commercial wish to grant one another a reciprocal easement (the "Easements") to enable Ellicott Station and Ellicott Station Commercial to construct the Residential Facility and Commercial Facility, respectively; and

WHEREAS, prior to the granting of the Easements by Ellicott Station and Ellicott Station Commercial, both the Residential Project Documents and Commercial Project Documents require the Agency consent to such action; and

WHEREAS, the Agency desires to provide its consent to the granting of the Easements; and

WHEREAS, the Agency desires to ratify certain terms of the Residential PILOT and the Commercial PILOT, specifically, the fixing of the Base Valuation (as defined in the Residential PILOT and Commercial PILOT, respectively) during the Interim Tax Years (as further specified in the Residential PILOT and Commercial PILOT, respectively).

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE YATES COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. 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 the Mortgage, assignment of leases and rents, 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") in such forms as approved by counsel to the Agency up to a maximum principal amount of **\$26,250,850.00** necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter, together with the Residential Documents and the Commercial Documents, 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 President/CEO, 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 Residential Project and the Commercial Project, respectively.

Section 2. The Agency hereby (i) consents to the above-described Easements and (ii) ratifies and confirms the terms of the Residential PILOT and the Commercial PILOT.

Section 3. The Chairman, Vice Chairman and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to execute any and all documents necessary to effectuate the foregoing resolutions.

Section 4. The officers, employees and agents of the Agency are hereby authorized and directed for an 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. This resolution shall take effect immediately.

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

	<u>Yea</u>	<u>Nay</u>	<u>Absent</u>	<u>Abstain</u>
Peter Zeliff	[X]	[]	[]	[]
Matthew Gray	[X]	[]	[]	[]
Paul Battaglia(Video Conference)	[X]	[]	[]	[]
Craig Yunker	[X]	[]	[]	[]
Todd Bender(Video Conference)	[X]	[]	[]	[]
Amy Vanderhoof	[]	[]	[X]	[]
Marianne Clattenburg(Video Conference)	[X]	[]	[]	[]

The resolutions were thereupon duly adopted.

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:

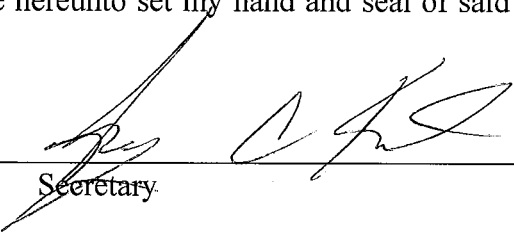
That I have compared the foregoing extract of the minutes of the special meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency") including the resolution contained therein, held on the 28th day of October, 2021, with the original thereof 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 relates 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 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 seal of said Agency this 25 day of October, 2021.



Secretary



**GCEDC Board Meeting
Monday, October 25, 2021
Location: Innovation Zone & Electronically
10:30 AM**

GCEDC MINUTES

Attendance

Board Members: C. Yunker, M. Clattenburg (Video Conference), P. Zeliff, M. Gray, P. Battaglia (Video Conference), T. Bender (Video Conference)
Staff: L. Farrell, M. Masse, J. Krencik, S. Hyde, C. Suozzi, P. Kennett, L. Casey
Guests: R. Crossen (Town of Alabama Supervisor)
Absent: A. Vanderhoof

1.0 Call to Order

P. Zeliff called the meeting to order at 10:30 a.m. in the Innovation Zone.

3.1 Ellicott Station LLC & Ellicott Station Commercial LLC Updated Resolution - The Ellicott Station project has a few updates that need to be approved through a revised resolution. There are three items that have been revised since the original approval:

1. With respect to the mortgage closing later this month, both Ellicott Station, LLC and Ellicott Station Commercial, LLC will each be granting one another access easements to construct each facility. The various leaseback agreements require the IDA consent to such. Included with meeting materials was a resolution whereby the board consents to each entity the necessary easement(s).
2. The estimated amount of the mortgage is being increased from \$20 million to \$26,250,850 million which will result in an increase to the mortgage tax exemption from \$200,000 to \$262,508.50.
3. The terms of the Residential PILOT and the Commercial PILOT, specifically, the fixing of the Base Valuation (as defined in the Residential PILOT and Commercial PILOT, respectively) during the Interim Tax Years (as further specified in the Residential PILOT and Commercial PILOT, respectively) results in a benefit to the company which in turn takes the PILOT from 30 years to 33 years. Normally the GCEDC PILOTS have companies pay 100% of any interim assessed value during construction so that does not qualify as a benefit since they are paying 100%. In this instance we are fixing the assessed value during the interim construction period, which could potentially give rise to a benefit. The GCEDC is seeking Board approval of this difference.

Fund Commitment: None.

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D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY")

AUTHORIZING (i) THE EXECUTION AND DELIVERY OF AN UP TO \$26,250,850.00 AGGREGATE PRINCIPAL AMOUNT MORTGAGE FOR THE ELLICOTT STATION LLC PROJECT AND ELLICOTT STATION COMMERCIAL LLC PROJECT, (ii) THE AGENCY TO CONSENT TO THE GRANTING OF RECIPROCAL EASEMENTS BY ELLICOTT STATION AND ELLICOTT STATION COMMERCIAL AND TO EXECUTE ALL NECESSARY DOCUMENTS IN CONNECTION THEREWITH, AND (iii) THE RATIFICATION OF CERTAIN TERMS OF CERTAIN TAX AGREEMENTS RELATING TO THE ELLICOTT STATION LLC PROJECT AND ELLICOTT STATION COMMERCIAL LLC PROJECT.

P. Battaglia made a motion to approve authorizing resolution #10/2021-01 to address the three items outlined above; item one is contingent upon Harris Beach legal review concurrence of the agreements; the motion was seconded by M. Clattenburg. Roll call resulted as follows:

P. Battaglia -	Yes (Video Conference)	C. Yunker -	Yes
T. Bender -	Yes (Video Conference)	P. Zelif -	Yes
M. Clattenburg -	Yes (Video Conference)	M. Gray -	Yes
A. Vanderhoof -	Absent		

The item was approved as presented.