

## RESOLUTION

*(University Eye Specialists Project)*

A special meeting of Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, March 1, 2012 at 4:00 p.m.

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

Resolution No. 03/2012 - 03

RESOLUTION AUTHORIZING THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER TO (i) UNDERTAKE A CERTAIN PROJECT (AS MORE FULLY DESCRIBED BELOW) FOR LASSITER PROPERTIES, LLC AND UNIVERSITY EYE SPECIALISTS, PC (TOGETHER, THE "COMPANY"); (ii) NEGOTIATE, EXECUTE AND DELIVER A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS; (iii) 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, RECONSTRUCTION, EXPANSION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT; AND (C) IF NECESSARY, A MORTGAGE RECORDING TAX EXEMPTION FOR FINANCING RELATED TO THE PROJECT; AND (iv) EXECUTE 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** (hereinafter called "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, **LASSITER PROPERTIES, LLC** and **UNIVERSITY EYE SPECIALISTS, PC** (together, the "Company") have submitted an application (the "Application"), 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: (i) the acquisition by the Agency of a leasehold (or other) interest in all or a portion of certain property comprising approximately one-third of an acre located at 217 Summit Street, Batavia, Genesee County, New York (the "Land"), and certain of the existing improvements located thereon consisting principally of the approximate 2,816 square-foot University Eye Specialists Batavia Office (the "Existing Improvements"); (ii) the construction of an approximately 1,961 square-foot expansion to the Existing Improvements (the "Expansion"); (iii) the renovation and upgrading of the Existing Improvements (the "Improvements"); and (iv) the acquisition by the Company in and around the Improvements of certain items of equipment, machinery and other tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements, the Expansion

and the Improvements, the "Facility"), all in furtherance of the Company's (and their tenants) Ophthalmology Practice and related business; and

WHEREAS, the City of Batavia Planning and Development Committee, as lead agency, conducted a coordinated review of the Project pursuant to the New York State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations at 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"), which resulted in the issuance of a negative declaration by the City of Batavia Planning and Development Committee dated November 15, 2011 (the "Negative Declaration") attached hereto as Exhibit B, concluding the SEQRA process; 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 that the Agency is contemplating with respect to the Project; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project pursuant to an agent agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (or amendment to an existing lease agreement) (the "Lease Agreement"), leaseback agreement (or amendment to an existing leaseback agreement) (the "Leaseback Agreement"), payment-in-lieu-of-tax agreement (or amendment to an existing payment-in-lieu-of-tax agreement) (the "PILOT Agreement") and related documents, with the Company, (iii) take or retain title to or a leasehold interest in the land, improvements, equipment and personal property constituting the Project (once the Lease Agreement, Leaseback Agreement and PILOT 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, reconstruction, expansion and equipping of the Project, (b) a partial real property tax abatement through the PILOT Agreement and (c) a mortgage recording tax exemption for the financing related to the Project; and

WHEREAS, the Lease Agreement, Leaseback Agreement and PILOT Agreement, and related documents have been negotiated and are presented to 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, renovating, expanding and equipping the Facility; 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 will not result in the removal of a facility or 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 located 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 facility or plant 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

(F) The City of Batavia Planning and Development Committee has conducted a review of the Project pursuant to Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. Part 617 (collectively referred to as "SEQRA"). In addition to classifying the Project as an Unlisted Action pursuant to SEQRA, the Commission also issued a Negative Declaration on November 15, 2011 determining that the Project did not present a potential significant adverse environmental impact. The Agency, having reviewed the materials presented by the Company, including but not limited to, the Short Environmental Assessment Form dated October 26, 2011, further determines that the Project does not pose a potential significant adverse environmental impact and thus ratifies the Negative Declaration previously issued by the Commission pursuant to 6 N.Y.C.R.R. § 617.7.

Section 2. Subject to the Company executing the Agent Agreement attached hereto as Exhibit A 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, reconstruction, expansion and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, renovate, expand and equip the Facility; (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 Agent Agreement shall expire on **December 31, 2012** (*unless extended for good cause by the Chief Executive Officer of the Agency*) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered.

Section 3. The Financial Assistance provided to the Company by the Agency shall not exceed \$100,000 and, therefore, a public hearing is not required to be held pursuant to the Act.

Section 4. The Chairman, Vice Chairman, Executive Vice President and/or the Chief Executive Officer of the Agency are hereby authorized, on behalf of the Agency, to negotiate and execute (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, and (C) the PILOT Agreement; *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; and (ii) the terms of the

PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with.

Section 5. The Chairman, Vice Chairman, and/or the President/CEO 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 by any lender identified by the Company (the "Lender") up to a maximum principal amount of needed to undertake the Project and/or finance equipment and other personal property and related transactional costs (hereinafter, with the Lease Agreement, Leaseback Agreement and PILOT 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, and/or the President/CEO of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman, and/or the President/CEO 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 6. 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 7. 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>	
James L. Vincent	[ × ]	[   ]	[   ]	[   ]	
Charlie Cook	[ × ]	[   ]	[   ]	[   ]	
Wolcott T. Hinchey	[ × ]	[   ]	[   ]	[   ]	
L. William Benton	[ × ]	[   ]	[   ]	[   ]	Via Skype
John F. Andrews	[ × ]	[   ]	[   ]	[   ]	Via Skype
Rochelle Stein	[ × ]	[   ]	[   ]	[   ]	

The Resolutions were thereupon duly adopted.

**CERTIFICATION**

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

The undersigned DOES HEREBY CERTIFY THAT:

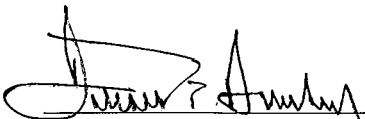
I have compared the foregoing extract of the minutes of the meeting of Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Issuer") including the resolution contained therein, held on the 1<sup>st</sup> day of March, 2012, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Issuer and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject in matters therein referred to.

I FURTHER CERTIFY that all members of said Issuer 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 Issuer 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 Issuer this \_\_\_\_\_ day of March, 2012.

  
\_\_\_\_\_  
Wolcott T. Hinchey, Secretary