

**FINAL RESOLUTION**  
*(Mega Properties, Inc. Project)*

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, April 3, 2014.

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

Resolution No. 04/2014-01

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (i) MAKING A DETERMINATION WITH RESPECT TO THE MEGA PROPERTIES, INC. PROJECT PURSUANT TO SEQRA (AS HEREINAFTER DEFINED), (ii) AUTHORIZING THE NEGOTIATION, EXECUTION AND DELIVERY OF AN AGENT AGREEMENT, LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS (AND/OR AMENDMENTS AND RESTATEMENTS OF EXISTING DOCUMENTS); (iii) PROVIDING FINANCIAL ASSISTANCE TO THE MEGA PROPERTIES, INC. (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, (B) A REAL PROPERTY TAX ABATEMENT STRUCTURED THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND (C) AN EXEMPTION FROM THE NEW YORK STATE MORTGAGE RECORDING TAX; 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, **MEGA PROPERTIES, INC.**, for itself or on behalf of an entity formed or to be formed (the "Company") previously submitted an application (the "Application") to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition or retention by the Agency of fee title to or a leasehold interest in an approximately 4 acre parcel of land located at 4330 Commerce Drive, in the Town of Batavia, Genesee County, New York (being tax map number 8.-1-63.112) (the "Land") and the existing improvements located thereon, consisting principally of an approximately 25,600 square-foot building (the "Existing Improvements"), (ii) the construction and equipping of an approximately 20,000 square-foot addition to the Existing Improvements, and related improvements and

infrastructure improvements thereto (collectively, the "Improvements"), (iii) the acquisition in and around the Land and the Improvements of certain items of equipment and other tangible personal property (the "Equipment," and collectively with the Land and the Improvements, the "Facility"), all in furtherance of the Company's distribution operations; 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, 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 agreement (the "Agent Agreement"), (ii) negotiate and enter into a lease agreement (or an amendment or restatement to an existing lease agreement) (the "Lease Agreement"), a leaseback agreement (or an amendment or restatement to an existing leaseback agreement) (the "Leaseback Agreement"), a payment-in-lieu-of-tax agreement (or an amendment or restatement to an existing PILOT 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, construction and equipping of the Project, (b) a real property tax abatement through the PILOT Agreement and (c) an exemption from the New York State mortgage recording tax; and

WHEREAS, on June 6, 2013, the Agency adopted a resolution (the "Initial Resolution") accepting the Company's Application and directing that a public hearing be held; and

WHEREAS, pursuant to Section 859-a of the Act, on June 26, 2013, at 4:00 p.m., at Batavia Town Hall, Board Room, 3833 West Main Street Road, 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 (the "Public Hearing"), whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views. A copy of the minutes of said Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions prior to the Public Hearing are attached hereto as Exhibit A; 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 Town of Batavia Planning Board, as lead agency, conducted a uncoordinated review of the Project pursuant to SEQRA, which resulted in the issuance of a negative declaration by the Town of Batavia Planning Board on March 18, 2014 (the "Negative Declaration"), which Negative Declaration is attached hereto as Exhibit B, concluding the SEQRA process; and

WHEREAS, the Agent Agreement, 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, 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 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 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 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

(F) The Town of Batavia Planning Board has conducted an uncoordinated review of the Project pursuant SEQRA. In addition to classifying the Project as an Unlisted Action pursuant to SEQRA, the Town of Batavia Planning Board also issued a Negative Declaration on March 18, 2014, 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 Form dated February 17, 2014, further determines that the Project does not pose a potential significant adverse environmental impact

and thus ratifies the Negative Declaration previously issued by the Town of Batavia Planning Board pursuant to 6 N.Y.C.R.R. § 617.7.

Section 2. 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 **\$490,000.00**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$39,200.00**. 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 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 3. 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, construct 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 Agent Agreement shall expire on **December 31, 2014** (*unless extended for good cause by the*

*President/CEO of the Agency*) if the Lease Agreement, Leaseback Agreement and PILOT Agreement contemplated have not been executed and delivered

Section 4. The Chairman, Vice Chairman and/or President/CEO 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, 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 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 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 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 President/CEO of the Agency shall approve, the execution thereof by the Chairman, Vice Chairman and/or President/CEO of the Agency to constitute conclusive evidence of such approval; *provided, that*, 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>
Wolcott T. Hinchey	[ X ]	[ ]	[ ]	[ ]
James L. Vincent	[ X ]	[ ]	[ ]	[ ]
Paul J. Battaglia	[ ]	[ ]	[ ]	[ X ]
Mary Ann E. Wiater	[ X ]	[ ]	[ ]	[ ]
Raymond F. Cianfrini	[ X ]	[ ]	[ ]	[ ]
John L. Rizzo	[ X ]	[ ]	[ ]	[ ]
Peter H. Zelif	[ X ]	[ ]	[ ]	[ ]

**SECRETARY'S CERTIFICATION**  
**(Mega Properties, 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:

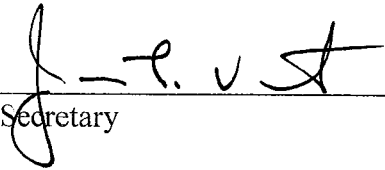
That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on April 3, 2014, with the original thereof on file in my office, and 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 3<sup>rd</sup> day of April, 2014.

  
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Secretary