

RESOLUTION OF THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING PLUM BOTTOM CREEK PROPERTIES, LLC (THE "LESSEE") TO CONSTRUCT A NEW 62,000 SQUARE FOOT COMMERCIAL AND RETAIL FACILITY LOCATED ON WEST MAIN STREET IN THE VILLAGE OF LANCASTER, TO BE USED FOR COMMERCIAL AND RETAIL DEVELOPMENT, THE ACQUISITION OF EQUIPMENT AND FIXTURES IN CONNECTION THEREWITH, AND THE GRANT TO THE LESSEE OF ASSISTANCE INCLUDING SALES TAX ABATEMENT, MORTGAGE TAX ABATEMENT AND REAL PROPERTY TAX ABATEMENT THROUGH A PAYMENT IN LIEU OF TAX ABATEMENT.

WHEREAS, Plum Bottom Creek Properties, LLC. (the "Lessee") has entered into negotiations with officials of the Town of Lancaster Industrial Development Agency (the "Agency") with respect to the construction of a 62,000 square foot commercial and retail facilities located on W Main Street in the Village of Lancaster, New York, to be used for commercial and retail development, and the purchase of fixtures and equipment in connection therewith, which facilities are to be acquired and/or leased by the Agency and leased back by the Agency to the Lessee and the which fixtures equipment are to be acquired by the Agency through an Installment Sale Agreement (the "Project"); and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency assistance to construct the Project with resultant continued employment in the Village of Lancaster; and it is anticipated that the Lessee will employ 20 full time employees after the Project is completed together with construction jobs during the construction period; the availability of financing and/or other assistance by the Agency will facilitate the Lessee's ability to expand Lessee's business within the Village of Lancaster; there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Village of Lancaster; the Project will provide employment and substantial capital investment; and Agency financing or other assistance is necessary to allow the Lessee to proceed with the Project in the Village of Lancaster; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Village of Lancaster;

NOW, THEREFORE, THE TOWN OF LANCASTER INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition and construction of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote, and is authorized by, and will be in furtherance of, the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) that but for the availability of Agency financing or other assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will provide substantial employment and substantial capital investment; and (e) the Project is necessary for the Lessee to maintain employment in the Village of Lancaster. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the Agency entering into a lease and leaseback only transaction; and (g) the Agency's assistance with the Project is an integral part of the Lessee's plans to proceed in the Village of Lancaster.

Section 2. The Agency finds that the Project is eligible for financial assistance because it qualifies as an adaptive reuse project. The Project is located in the distressed “downtown” West Main Street Development area in the Village of Lancaster. The project will promote infill development and will generate significant economic activity in an area of the Village of Lancaster that has long been unused or underused. The Project is consistent with the Joint Comprehensive Plan adopted by the Town of Lancaster, Village of Lancaster and Village of Depew, dated February 2018.

Section 3. The Agency hereby authorizes the Lessee to proceed with the acquisition and construction of the Project with the estimated maximum cost to the Lessee of the Project not to exceed \$12,000,000.00, as herein authorized. The assistance by the Agency shall be financed through a mortgage transaction with a lease and leaseback transaction and installment sale agreement between the Agency and the Lessee on the construction of the Improvements and the purchase and installation of Equipment required in connection therewith. No other financial assistance shall be provided unless and until it is authorized following a duly held public hearing.

Section 4. The Agency will undertake, as soon as particular terms and conditions of a Lease Agreement are determined to enter into a lease and leaseback with the Lessee.

Section 5. The Chairman, Vice Chairman, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 6. The Lessee is authorized to initiate the construction of the commercial and retail facility with a cost not to exceed \$12,000,000.00 without further approval by the Agency. The Agency is hereby authorized to enter into Agent Agreements and such other agreements with the Lessee as the Chairman, Vice Chairman or other authorized officer may deem necessary in order to accomplish the above.

Section 7. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project are hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses with respect to the Project and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Project and the financing thereof, if applicable.

Section 9. The Agency hereby authorizes the Lessee to proceed with the Project with the estimated maximum cost to the Lessee of the Project not to exceed \$12,000,000.00, as herein authorized. The assistance by the Agency shall be financed through a lease with a mortgage or lease and leaseback, payment in lieu of taxes (PILOT) and installment sale agreement between the Agency and the Lessee, sales tax abatement, mortgage tax abatement and real property tax abatement. No other financial assistance shall be provided unless and until it is authorized following a duly held public hearing.

Section 10. The provisions of this resolution shall continue to be effective until two years from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. This resolution is also subject to (a) construction of space suitable for the purpose authorized herein, (b) provision for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 12. The execution and delivery of an Agent Agreement and lease/leaseback between the Agency and the Lessee, substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman or Secretary, are hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project constitutes a Type II action under the State Environmental Quality Review Act and does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant effect on the environment.

Section 14. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs or the extent to which proceeds derived from the sale of any bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee hereby agrees to indemnify and holds the Agency harmless from any such loss, damage or expense.

Section 15. Should the Agency's participation in the Project be challenged by any party, in the courts or otherwise, the Lessee and shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null and void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. This resolution shall take effect immediately.

ADOPTED: March 10, 2020

I, Cynthia Maciejewski, being the Administrative Secretary and Records Management Officer of the Lancaster Industrial Development Agency, hereby certify that this is a true and correct copy of the Resolution adopted by the Lancaster Industrial Development Agency Board on March 10, 2020.

Cynthia Maciejewski 3/10/2020
Cynthia Maciejewski Date