

RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on July 16, 2019 at 8:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chairman and upon the roll being duly called, the following members were:

PRESENT: Michael Frame, Steven Thompson, Kathleen Murphy, Rickey T. Brown, Kenneth Kinsey

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Judith DeLaney, Susan R. Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others Present: James Trasher, Rich Pascarella, Kevin McAuliffe, Esq., Stephen Byer, Aggie Lane, Stephanie Pasquale, Joe Maricsa, Mitch Lattimer, Deli Vargus, Eric Ennis, Cypris T.; Media: Rick Moriarty

The following resolution was offered by Kathleen Murphy and seconded by Kenneth Kinsey:

RESOLUTION APPROVING A RETROACTIVE EXTENSION OF THE TEMPORARY SALES TAX APPOINTMENT OF ALAN BYER AUTO SALES, INC. AND ALAN I BYER FAMILY TRUST AS AGENTS OF THE AGENCY UNTIL SEPTEMBER 13, 2019; AND AUTHORIZING THE EXECUTION OF ANY AND ALL NECESSARY DOCUMENTS

WHEREAS, the City of Syracuse Industrial Development Agency (the "**Agency**") is authorized and empowered by Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "**State**"), as amended, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, including industrial pollution control facilities, railroad facilities and certain horse racing facilities, for the purpose of promoting, attracting, encouraging and developing recreation and economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust (collectively, the "**Original Company**"), by application dated October 23, 2018 (the "**Original Application**"), requested the Agency undertake a certain project (the "**Original Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.89 acres of improved real property located at 1232-36 West Genesee Street (also known as 1230 West Genesee Street), in the City of Syracuse, New York (the "**Original Land**"); (ii) the renovation of an existing approximately

25,820 square foot building for use as an auto dealership, including but not limited to, renovation of interior showroom, sales offices and reception areas, external replacement of entry, new exterior wall finishes, updated signage and roof replacement, all located on the Land (the "**Original Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Original Equipment**" and together with the Land and the Facility, the "**Original Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Original Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Original Project Facility; and (D) the lease of the Original Land and Original Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Original Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Original Project Facility back to the Company pursuant to a sublease agreement. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved in the Original Inducement Resolution was in an amount not exceed **\$140,000**; and

WHEREAS, on December 18, 2018 the Agency adopted a resolution which, among other things, authorized the Agency to undertake the Project and appoint the Company as its agent for purposes of acquiring, renovating and equipping the Project Facility (the "**Original Inducement Resolution**") subject to the terms thereof and the execution of an agency agreement in substantially the same form attached to the Inducement Resolution (the "**Agency Agreement**") and authorized the temporary appointment of the Original Company as the Agency's agent for purposes of undertaking certain work with respect to the Project Facility prior to the Original Company being able to close on the lease transaction with the Agency (the "**Lease Transaction**"), including exemptions from State and local sales and use tax in an amount not to exceed **\$140,000** (the "**Temporary Appointment**"); and

WHEREAS, by Supplemental Application dated March, 2019, Alan Byer Auto Sales, Inc., Alan I Byer Family Trust, Stephen Gary Byer, d/b/a Byer Real Estate Enterprises and West Genesee Realty Associates, LLC (collectively, the "**Company**"), (the "**Application**"), advised the Agency of certain modifications to the Original Project as well as the Original Company, and requested the Agency undertake, at the request of the Company, the Original Project as modified, (the "**Project**") consisting of: (A)(i) the acquisition of an interest in: (1) approximately 1.89 acres of improved real property bearing tax map number 108.1-02-19 and commonly referred to as 1232-36 West Genesee Street (also known as 1230 West Genesee Street) ("**Parcel 1**"); (2) approximately 3 acres of improved real property bearing tax map number 108.1-02-35.1 and commonly referred to as 1232 West Genesee Street (rear) ("**Parcel 2**"); and (3) approximately 2 acres of improved real property bearing tax map number 108.1-02-20 and commonly referred to as 1288 West Genesee Street ("**Parcel 3**"), each in the City of Syracuse, New York (collectively, the "**Land**"); (ii) there is an existing approximately 25,820 square foot building located on Parcel 1; an existing approximately 17,000-square foot building located on Parcel 2; and an approximately 34,802 square foot building located on Parcel 3, all of which are served by common driveways, parking, and pedestrian walkways, and all of which comprise the Alan Byer Volvo facility (collectively, the "**Improvements**"); (iii) the renovation to the Improvements include, but are not limited to, the interior showroom, sales offices and reception areas, external

replacement of entry, new exterior wall finishes, updated signage, the existing basement, replacement of an area of deteriorating floor slab, refreshed directional pavement graphics and roof replacement (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "Equipment" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, reconstruction, renovation, equipping and completion of the Project Facility; and (D) the lease of the Land and Facility by the Agency pursuant to a lease agreement and the acquisition of an interest in the Equipment pursuant to a bill of sale from the Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, the Agency and Company executed an Interim Project Agreement dated as of December 31, 2018 (the "**Interim Project Agreement**"), as amended by the First Amendment to Interim Project Agreement dated March 19, 2019 (the "**First Amendment to Interim Project Agreement**"), the Company executed a Bill of Sale dated as of December 31, 2018 and an Environmental Compliance and Indemnification Agreement dated as of December 31, 2018, each in favor of the Agency, and the Agency issued a Temporary Sales Tax Appointment Letter to the Company on December 31, 2018, which was amended and extended by letter dated March 19, 2019 (collectively, the "**Letter**") and a Form ST-60 – IDA Appointment of Project Operator or Agency for Sales Tax Purposes was filed with the New York State Department of Taxation and Finance. The Temporary Appointment expired on May 31, 2019; and

WHEREAS, the Company has requested a retroactive extension of the Original Company's Temporary Appointment through and including September 13, 2019 to allow additional time to finalize the PILOT Agreement and close on the lease transaction while benefitting from the Temporary Appointment (the "**Second Extension**"); and

WHEREAS, the Second Extension is in furtherance of the financial assistance that was previously approved for the Project, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act ("**SEQRA**"), and the present sales tax appointment extension request is insubstantial and does not require reconsideration or further review by the Agency under SEQRA.

NOW, THEREFORE, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

(1) Based upon the representations made by the Company to the Agency, the Agency hereby makes the following findings and determinations:

(a) The granting of the Second Extension of the Temporary Appointment does not require reconsideration or further review by the Agency under SEQRA.

(b) The Agency authorizes the Second Extension of the Temporary Appointment of the Original Company through and including **September 13, 2019**. If for any

reason it is determined or decided that the Agency cannot extend the Original Company's appointment retroactively, then in that case, the Agency hereby appoints the Company, effective as of July 16, 2019, to act as its agent in accordance with the terms hereof and the First Amendment to Interim Project Agreement, as may be further amended in accordance with the terms of this Resolution.

(c) By operation of, and subject to the terms of, this Resolution, the Temporary Appointment shall be extended through and including **September 13, 2019** but all other terms and conditions of the Interim Project Agreement, as amended, remain unchanged and in full force and effect.

(d) By accepting the Second Extension and benefitting therefrom, the Company shall execute and deliver a certificate acknowledging: (i) that the Agency makes no representation that the retroactive extension will be effective; (ii) that in such event that the State finds or determines that a retroactive extension is not effective the Company bears all risk related thereto; (iii) that regardless of whether the Company closes on the lease transaction or receives any benefits from the Agency, the Company shall nonetheless be responsible for all legal fees incurred by the Agency; and (iv) that failure to close on the lease transaction on or before **September 13, 2019** will result in the Agency seeking to recapture all of the State and local sales and use tax exemptions realized by the Project from the Company.

(2) The Agency is authorized to execute any and all documents necessary to effectuate the Second Extension and the sales tax appointment agent status of the Original Company and/or the Company, as applicable, and/or its Additional Agents (as that term is defined in the Agency's Inducement Resolution) (collectively, the "***Second Extension Documents***") including but not limited to further revisions or amendments of the Interim Project Agreement, and/or the First Amendment to Interim Project Agreement, issuance of a new Sales Tax Appointment Extension Letter and an amendment or extension of the appropriate "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for each of the applicable entities; and the (Vice) Chairman and Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the documents upon the advice of counsel to the Agency. The execution thereof by the Executive Director, Chairman or Vice Chairman constitutes conclusive evidence of such approval.

(3) As a further condition of the Second Extension, the Company will: (i) confirm that all insurance as well as Environmental Compliance and Indemnification Agreement executed and delivered in conjunction with the Interim Project Agreement, remains in full force and effect and will continue to do so for so long as the Second Extension is in effect and in accordance with its terms; (ii) submit to the Agency any applicable information, including but not limited to proof of insurance naming the Agency as an additional insured pursuant to the Agency's requirements, requested by the Agency with respect to the Second Extension; (iii) certify that any and all Financial Assistance being provided and/or used pursuant to this Resolution is being used on the Project as described herein; (iv) remit all legal fees incurred by the Agency in exchange for the Agency's grant of the Second Extension; and (v) submit any proof required by the Agency demonstrating that the Company has not realized State and local sales and use tax exemptions in excess of what was authorized for the Project.

(4) The Company shall execute and deliver any and all documents required by the Agency in connection with the Second Extension and to carry out the intent of this Resolution; and

(5) The Company shall provide or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the Agency and the State Commissioner of Taxation and Finance (the "**Commissioner**") upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project's receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request.

(6) No covenant, stipulation, obligation or agreement contained in this resolution or any document referred to herein shall be deemed to be the covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity. Neither the members nor officers of the Agency, nor any person executing any documents referred to above on behalf of the Agency, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

(7) The Secretary of the Agency is hereby authorized and may distribute copies of this Resolution and do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

(8) A copy of this Resolution, together with any attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

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

	<u>AYE</u>	<u>NAY</u>
Michael Frame	X	
Steven Thompson	X	
Kathleen Murphy	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

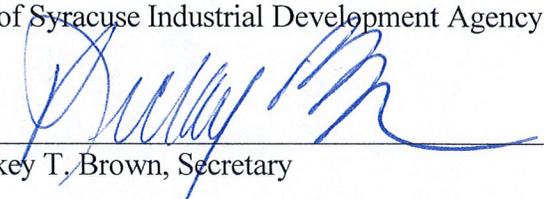
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on July 16, 2019, with the original thereof on file in my office, and that the same (including any and all exhibits) is a true and correct copy of the proceedings of the Agency and of the whole of such original insofar as the same relates to the subject matters referred to therein.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of such meeting, (ii) pursuant to Section 104 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public and public notice of the time and place of such meeting was duly given in accordance with such Section 104, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

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 rescinded.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency this 20 day of August, 2019.

City of Syracuse Industrial Development Agency



Rickey T. Brown, Secretary

(S E A L)