

RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on March 19, 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 roll being called, the following members of the Agency were:

PRESENT: Steven Thompson, Kenneth Kinsey, Kathleen Murphy, Rickey T. Brown, Michael Frame (via video conference at second location at NonoFab East, 257 Fuller Road, Albany, New York 12203)

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Honora Spillane, Susan Katzoff, Esq., Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Debra Ramsey-Burns; Others Present: Michael Lisson, Aggie Lane, Gail Montplaisir, Anthony Dipeso, Wendy Rucelli, M. Latimer, Fred Swayze, Richelle Brown, Kevin McAuliffe, Esq., Steve Hillebrand, Norman Smith, Sharon Owens, Lauryn LaBourde, Ebony Farrow, Peter King

The following resolution was offered by Kenneth Kinsey and seconded by Rickey T. Brown:

RESOLUTION APPROVING AN EXTENSION OF THE SALES TAX APPOINTMENT OF ALAN BYER AUTO SALES, INC. AND ALAN I BYER FAMILY TRUST AS AGENTS OF THE AGENCY UNTIL MAY 31, 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, at the request of Alan Byer Auto Sales, Inc. and Alan I Byer Family Trust (collectively, the "**Company**"), by resolution dated January 16, 2018 (the "**Inducement Resolution**") the Agency agreed to undertake a project (the "**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) (tax map number 108.1-02-19), in the City of Syracuse, New York (the "**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 "**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, on December 18, 2018, the Agency adopted resolutions 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 (collectively, the "**Approving Resolutions**") subject to the terms thereof and the execution of an agency agreement in substantially the same form attached to the Approving Resolutions (the "**Agency Agreement**"); and

WHEREAS, following the adoption of Approving Resolutions, but prior to the Company being able to close on the lease transaction with the Agency (the "**Lease Transaction**"), the Company requested the Agency authorize the temporary appointment of the Company as the Agency's agent for purposes of undertaking certain work with respect to the Project Facility including exemptions from State and local sales and use tax in an amount not to exceed \$140,000 (the "**Temporary Appointment**"); and

WHEREAS, pursuant to a resolution dated December 18, 2018 (the "**Inducement Resolution**"), the Agency approved the Company's request for the Temporary Appointment; and

WHEREAS, the Agency and Company executed an Interim Project Agreement dated as of December 31, 2018 (the "**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 and the Agency issued a Temporary Sales Tax Appointment Letter to the Company on December 31, 2018 (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 March 1, 2019; and

WHEREAS, by letter dated March 12, 2019, the Company requested an extension of their Temporary Appointment from March 1, 2019 to May 31, 2019 to allow additional time to close on the lease transaction while still benefitting from the Temporary Appointment (the "**Extension**"); and

WHEREAS, the Temporary Appointment 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; and

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 Extension of the Temporary Appointment does not require reconsideration or further review by the Agency under SEQRA.

(b) The Agency authorizes the Extension of the Temporary Appointment of the Company through and including **May 31, 2019** contingent upon receipt of certification of Company that Financial Assistance is only being used with respect to the Project as defined herein. By operation of this Resolution, the Temporary Appointment shall be extended through and including **May 31, 2019** but all other terms and conditions of the Interim Project Agreement remain unchanged and in full force and effect.

(c) By accepting the Extension and benefitting therefrom, the Company shall agree that failure to close on the lease transaction on or before **May 31, 2019** will result in the Agency seeking to recapture all of the State and local sales and use tax exemption realized by the Project.

(2) The Agency is authorized to execute any and all documents necessary to effectuate the Extension and the sales tax appointment agent status of the Company and/or its Additional Agents (as that term is defined in the Agency’s Appointment Resolution) (collectively, the “**Extension Documents**”) including but not limited to revisions or amendments of the 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 entities; and the Chairman and Vice Chairman 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 Chairman or Vice Chairman constitutes conclusive evidence of such approval.

(3) As a condition of the 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 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 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 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 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	
Kenneth Kinsey	X	
Rickey T. Brown	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 March 19, 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 19 day of April, 2019.

City of Syracuse Industrial Development Agency



Rickey T. Brown, Secretary

(S E A L)