

Date: May 31, 2013

At a meeting of the Wayne County Industrial Development Agency (the "Agency"), held on May 31st, 2013, at 16 William Street, Lyons, New York 14489, the following members of the Agency were:

Present: Messrs. Hoffman, Spickerman, Havrilla and Milliman

Absent: Ms. Heald

Recused:

Also Present: John Morell, Esq.; P.Churchill, D.Richards, M.Leisenring,
Bob McNary

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the authorization of the mortgaging of the Facility and the execution of related loan documents in connection with a certain industrial development facility more particularly described below (Otto LLC, Barry Simons, The Dave & Gabrielle Stein 2002 Revocable Trust, Jeffery J. Fong and Melissa A. Fong, LLC, and Melanie Coyle/DJ Acquisition Management Corp. 2008 Facility).

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

James Hoffman

Robert Havrilla

Willard Milliman

David Spickerman

Voting Nay

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE MORTGAGING OF THE FACILITY AND THE EXECUTION AND DELIVERY OF LOAN DOCUMENTS IN CONNECTION THEREWITH FOR THE OTTO LLC, BARRY SIMONS, THE DAVE & GABRIELLE STEIN 2002 REVOCABLE TRUST, JEFFERY J. FONG AND MELISSA A. FONG, LLC, AND MELANIE COYLE/DJ ACQUISITION MANAGEMENT CORP. 2008 FACILITY AND APPROVING THE FORM, SUBSTANCE AND EXECUTION OF 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 916 of the Laws of 1969 of the State of New York, as may be amended from time to time (collectively, the “**Act**”), the Wayne County Industrial Development Agency (the “**Agency**”) was created with the authority and power among other things, to assist with the acquisition of certain industrial development projects as authorized by the Act; and

WHEREAS, the Agency previously acquired a leasehold interest in a certain parcel of land consisting of the acquisition of an approximately 7.59 acre parcel of land located at 6364 Dean Parkway and 6366 Dean Parkway, Town of Ontario, Wayne County, New York and an approximately 54,600 square foot existing building located thereon, leased by the Agency to DJ Property Management, LLC, a duly organized and validly existing New York limited liability company (“**DJ Property**”), and subleased by DJ Property to, and used by, DJ Acquisition Management Corp., a New York business corporation (the “**Sublessee**”), which acquired the equipment and other business assets of WECO Metal Products, Inc. for metal fabrication and finishing (the “**Facility**”); and

WHEREAS, DJ Property previously leased the Facility to the Agency pursuant to and in accordance with the terms of a certain Company Lease Agreement, dated as of November 1, 2005 (the “**Company Lease**”), by and between DJ Property, as lessor, and the Agency, as lessee, and a Memorandum of Company Lease was recorded November 30, 2005 in the Wayne County Clerk’s Office under Instrument No. R9065516; and

WHEREAS, the Agency previously subleased the Facility to DJ Property pursuant to and in accordance with the terms of a certain Lease Agreement, dated as of November 1, 2005 (the “**Lease Agreement**”), by and between the Agency, as sublessee, and DJ Property, as sublessor, and a Memorandum of Lease was recorded November 30, 2005 in the Wayne County Clerk’s Office under Instrument No. R9065517; and

WHEREAS, DJ Property previously sub-subleased the Facility to the Sublessee pursuant to and in accordance with a certain Sublease Agreement, dated November 17, 2005 (the “**Sublease Agreement**”), by and between DJ Property and the Sublessee, a Memorandum of Sublease was recorded November 30, 2005 in the Wayne County Clerk’s Office under Instrument No. R90065518, and in connection with such Sublease Agreement, the Agency and the Sublessee entered into an Agency Compliance Agreement, dated as of November 1, 2005 (the “**Agency Compliance Agreement**”); and

WHEREAS, in connection with the leasing and the subleasing of the Facility, the Agency, DJ Property and the Sublessee entered into a First Amended and Restated Payment-in-Lieu-of-Tax Agreement, dated as of November 1, 2005 (the "**PILOT Agreement**"), which PILOT Agreement provided for DJ Property and the Sublessee to make payments in lieu of real property taxes on the Facility; and

WHEREAS, in connection with the leasing and the subleasing of the Facility, the Agency, DJ Property and the Sublessee entered into an Environmental Compliance and Indemnification Agreement, dated as of November 1, 2005 (the "**Environmental Compliance and Indemnification Agreement**"); and together with the Lease Agreement and the PILOT Agreement, the "**Facility Documents**"), whereby DJ Property and the Sublessee agreed to comply with all Environmental Laws (as defined therein) applicable to the Facility; and

WHEREAS, there was previously submitted to the Agency a request to consent to the assignment and assumption of DJ Property's leasehold interest in the Facility to Cofinan Partners, LLC, a New York limited liability company ("**Cofinan**"), and to release DJ Property from any further liability with respect to the Facility, subject to the limitations outlined in a certain Assignment, Assumption and Amendment Agreement (DJ Property Management, LLC to Cofinan Partners, LLC), dated July 17, 2008 (the "**Cofinan Assignment, Assumption and Amendment Agreement**"); and

WHEREAS, the Facility Documents were assigned by DJ Property to Cofinan and the Lease Agreement was amended pursuant to and in accordance with the Cofinan Assignment, Assumption and Amendment Agreement, and Cofinan assumed all of the right, title, interest, liability, duty and obligations of DJ Property with respect to the Facility, including but not limited to, all of the right, title, interest, liability, duty and obligation of DJ Property under the Lease Agreement, the PILOT Agreement and the Environmental Compliance and Indemnification Agreement, subject to the limitations outlined therein; and

WHEREAS, in connection with such assignment and assumption, Cofinan continued to sublease the Facility to the Sublessee, pursuant to a Sublease Agreement, dated July, 2008 (the "**Sublease Agreement**"), by and between Cofinan and the Sublessee, which Sublease Agreement or a memorandum thereof, was to be recorded in the Wayne County Clerk's Office; and

WHEREAS, there was previously submitted to the Agency a request to consent to the further assignment and assumption of Cofinan's leasehold interest in the Facility to Otto, LLC, a California limited liability company, Barry Simons, an individual, The David & Gabrielle Stein 2002 Revocable Trust, a California revocable trust, Jeffrey T. Fong and Melissa A. Fong, LLC, a Texas limited liability company, and Melanie Coyle, an individual, (collectively, the "**Otto Group**") and to release Cofinan from any further liability with respect to the Facility, subject to the limitations outlined herein; and

WHEREAS, the Facility Documents were assigned by Cofinan to the Otto Group and the Lease Agreement was amended pursuant to and in accordance with a certain Assignment, Assumption and Amendment Agreement, dated July 17, 2008 (the "**Assignment, Assumption and Amendment Agreement**"), by and among the Agency, Cofinan, the Sublessee and the Otto Group, and the Otto Group assumed all of the right, title, interest,

liability, duty and obligations of Cofinan with respect to the Facility, including but not limited to, all of the right, title, interest, liability, duty and obligations of Cofinan under the Lease Agreement, the PILOT Agreement and the Environmental Compliance and Indemnification Agreement, subject to the limitations outlined therein; and

WHEREAS, in connection with such assignment and assumption, the Otto Group continued to sublease the Facility to the Sublessee, pursuant to the Sublease Agreement, which Sublease Agreement was assigned by Cofinan to the Otto Group and the Sublease Agreement was amended pursuant to and in accordance with a certain Assignment of Sublease Agreement, dated July 17, 2008 (the "**Assignment of Sublease**"), among Cofinan, Otto Group and the Sublessee; and

WHEREAS, in connection with the Otto Group's assumption of Cofinan's interest in and to the Facility, Otto Group borrowed from Bank of the West (the "**2008 Mortgagee**") the aggregate principal amount of \$3,000,000 (the "**2008 Loan**") pursuant to the terms of a certain permanent promissory note, dated June 22, 2008 (the "**2008 Note**"); and

WHEREAS, to secure the payment and performance of the Otto Group of all liabilities and obligations due under the 2008 Note, the Agency and the Otto Group entered into a certain Mortgage and Security Agreement with Assignments of Leases and Rents, dated June 22, 2008 (the "**2008 Mortgage**"), from the Agency and the Otto Group to the 2008 Mortgagee, encumbering the Otto Group's fee interest and the Agency's leasehold interest in the Premises; and

WHEREAS, the Otto Group desires to refinance the 2008 Mortgage with a lower rate loan or loans (collectively, the "**2013 Loans**"); and

WHEREAS, the 2008 Mortgage will be assigned to The Canandaigua National Bank and Trust Company, or another lender selected by the Otto Group (collectively, the "**2013 Lender**") pursuant to a certain Assignment of Mortgage, dated a dated to be determined (the "**Assignment of 2008 Mortgage**");

WHEREAS, Otto Group has requested that the Agency join with the Otto Group in executing and delivering to the 2013 Lender, a certain Gap Mortgage and Security Agreement, securing the principal amount of \$48,079.23 (the "**Gap Mortgage**") and a Mortgage Consolidation, Extension, Modification and Security Agreement (the "**Consolidation Agreement**"), consolidating the 2008 Mortgage and the Gap Mortgage and securing a total principal of \$2,800,000 (the Gap Mortgage together with the Consolidated Mortgage, collectively, the "**2013 Mortgages**"), and such other loan documents, satisfactory to the Agency, upon advice of counsel, in both form and substance, as may be reasonably requested by the 2013 Lender in connection with the financing and refinancing of the Facility (collectively, the "**2013 Loan Documents**"); and

WHEREAS, in connection with such refinancing, the 2008 Mortgage will be satisfied in full and released from the public record; and

WHEREAS, the Agency contemplates that it will not provide financial assistance to the Otto Group in connection with the 2013 Loan in the form of exemptions from mortgage recording taxes; and

WHEREAS, the Otto Group has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the financing or refinancing of the acquisition, construction and equipping of the Facility.

NOW, THEREFORE, BE IT RESOLVED by the Agency (a majority of the members thereof affirmatively concurring) as follows:

Section 1 The Agency hereby finds and determines:

(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) The Facility continues to constitute a “project”, as such term is defined in the Act; and

(c) The mortgaging of the Facility by the Agency and the Otto Group as contemplated in this resolution will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of Wayne County and the State of New York and improve their standard of living and thereby serve the public purposes of the Act; and

(d) The mortgaging of the Facility as contemplated in this resolution is reasonably necessary to maintain the competitive position of the Otto Group and the Sublessee in their respective industries; and

(e) Based upon representations of the Otto Group and counsel to the Otto Group, the Facility continues to conform with the local zoning laws and planning regulations of Wayne County and all regional and local land use plans for the area in which the Facility is located; and

(f) It is desirable and in the public interest for the Agency to assist in the mortgaging of the Facility; and

(g) The 2013 Loan Documents, including the 2013 Mortgages, will be effective instruments whereby the Agency and the Otto Group agree to secure the 2013 Loan made to the Otto Group by the 2013 Lender.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (i) grant mortgage liens on and security interests in and to the Facility pursuant to the 2013 Mortgages and the 2013 Loan Documents to which the Agency is a party, (ii) execute, deliver and perform the 2013 Mortgages and the 2013 Loan Documents to which the Agency is a party, and (iii) execute, deliver and perform such other related documents to which the Agency is a party, as may be necessary or appropriate to effect the 2013 Loans or any subsequent refinancing of the 2013 Loans.

Section 3. The Agency is hereby authorized to do all things necessary or appropriate for the execution, delivery and performance of the 2013 Mortgages and the 2013 Loan Documents and such other related documents as may be necessary or appropriate to effect the loan or any subsequent refinancing of the 2013 Loans, and all acts heretofore taken by the Agency with respect to such financing or refinancing are hereby approved, ratified and confirmed; provided that the form and substance of the 2013 Mortgages and the 2013 Loan Documents, and such other related documents, respectively, shall be satisfactory in all material respects to counsel to the Agency and Transaction Counsel and to the officer of the Agency executing the 2013 Mortgages and the 2013 Loan Documents, and such other related documents.

Section 4.

(a) The Chairman, Executive Director, and all members of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the 2013 Mortgages and the Loan Documents to which the Agency is a party in the form(s) the Chairman, Executive Director or any member of the Agency shall approve, and such other related documents respectively, as may be, in the judgment of the Chairman and counsel to the Agency, necessary or appropriate to effect the transactions contemplated by this resolution (hereinafter collectively called the “**Agency Documents**”). The execution thereof by the Chairman, Executive Director or any member of the Agency shall constitute conclusive evidence of such approval.

(b) The Chairman, Executive Director and all members of the Agency are further hereby authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency (as defined in and pursuant to the Lease Agreement).

Section 5. 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 or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional certificates, instruments and documents, 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 resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 6. This resolution shall take effect immediately.

