

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

BOARD OF DIRECTORS

Special Meeting Minutes April 27th, 2018

8:00 AM – Board Meeting – IDA Conference Room

1.0 **Roll Call**

Present –Chairman Tom Sy, Vice Chairman Eric Connor, Treasurer Sallie Reed, Board members, Harold Anderson and Todd Fragale, Legal Counsel –Brian Seaman, Administrative Director – Marc Smith

Excused: Mr. Antkowiak, Mr. Runk

2.0 **CALL TO ORDER:** The meeting was called to order by Chairman Sy at 8:02 am.

3.0 **PUBLIC HEARING OPENED:**

Chairman Sy opened the Public Hearing at 8:03am for the purposes of hearing from interested parties regarding the proposed application and incentive for Up North Holding, LLC.

There was no member of the public in attendance. There were no written comments received.

Daniel Saltman from Up North Hosting, LLC gave an overview of his experience in the field of internet businesses which include Change.org and thehunt.com.

The Board asked Mr. Saltman several questions regarding his proposed project.

4.0 **PUBLIC HEARING CLOSED:**

There being no further questions from the IDA Board of Directors the Public Hearing was closed at 8:18am.

5.0 **RESOLUTION:**

On a motion by Mr. Connor seconded by Mr. Fragale the Board of Directors voted to approve the following resolution by roll call vote.

Mr. Anderson	YES
Mr. Fragale	YES
Mr. Connor	YES
Mrs. Reed	YES
Chairman Sy	YES

RESOLUTION OF THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY (THE AGENCY) AUTHORIZING UP NORTH HOSTING LLC (THE LESSEE) FOR THE ACQUISITION OF 4922 IDA PARK DRIVE, LOCKPORT, NEW YORK (TAX MAP NO. 108.00-1-55) AND ACQUISITION OF A 13,500+/- SQUARE FOOT BUILDING THEREON TO BE USED FOR A DATA CENTER AT THAT ADDRESS AND TO ACQUIRE AND INSTALL MACHINERY AND EQUIPMENT REQUIRED IN CONNECTION WITH THE SAME, AND AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE TO THE AGENCY, A LEASEBACK AGREEMENT, A MORTGAGE AND SECURITY AGREEMENT, AND OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH.

WHEREAS, UP NORTH HOSTING LLC (the Lessee) has entered into negotiations with the Town of Lockport Industrial Development Agency (the Agency) for assistance for the acquisition of property at 4922 IDA Park Drive, Lockport, New York and acquisition of a 13,500+/- square foot building thereon (the premises) and to utilize said building for a data center and related activities at that address and for acquisition of equipment and machinery in

connection therewith (the Project) and the lease of the project to the Agency and leaseback to the Lessee, or a related entity, with real property tax abatement, mortgage tax abatement and sales tax abatement, if applicable; and

WHEREAS, the Lessee has submitted an Application for Financial Assistance and other materials and information to the Agency (collectively hereinafter the "Application for Incentives") to initiate the accomplishment of the above; and

WHEREAS, the Application for Financial Assistance sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency assistance to purchase the Project for a data center and related purposes with resultant increase in employment in the Town of Lockport; the Lessee will employ approximately five full-time employees and two part-time employees after the Project is fully completed; that but for the availability of financing and/or other assistance by the Agency, the Lessee would not locate the Project and expand its business within the Town of Lockport, there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lockport, and the Project will provide substantial increased employment and substantial capital investment; if Agency financing or other assistance is disapproved, the Lessee would likely not proceed with the Project; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee to proceed with the Project in the Town of Lockport; 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 encourage the Lessee with respect to the acquisition of the Project, if by so doing it is able to induce the Lessee, to proceed with the Project in the Town of Lockport; and

WHEREAS, the Agency has determined that the Project be limited to the parcel located at 4922 IDA Park Drive, Town of Lockport, New York (Tax Map No. 108.00-1-55); and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition and installation 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 Application for Incentives 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) but for the availability of Agency 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; and (d) the Project will preserve and provide substantial employment and substantial capital investment. The Agency further determines, on the basis of the Lessee's Application for Incentives that (e) the Project as represented is reasonably necessary to provide the purposes of the Act, and (f) the Project is an integral part of the Lessee's plan to proceed with the Project in the Town of Lockport.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized at a cost not to exceed \$735,000.00, which Project will be financed without mortgage financing, but with a Lease Agreement between the Agency and the Lessee each in substantially the same form approved by the Agency for prior transactions or in form approved by the Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary, and any member or officer of the Agency, who are hereby authorized to execute, acknowledge and deliver each such Instrument and the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to affix the seal of the Agency on each such instrument, as applicable, and attest the same, or in the alternative through a lease transaction. All other provisions of the Resolution relating to the Lease Agreement, shall apply to such Instruments.

All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and the Lease Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, and the Lease Agreement, as the case maybe, shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation or agreement herein contained or contained in any mortgage financing, any UCC-1 Financing Statements and the Lease Agreement or any other agreement or instrument executed and delivered by the Agency in furtherance of this resolution shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agency or employee of the Agency in his individual capacity and neither the members of the Agency or any officer executing the mortgage financing, the UCC-1 Financing Statements and the Lease Agreement shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

The Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary, and any member or officer of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all agreements, 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 any mortgage financing, any UCC-1 Financing Statements and the Lease Agreement.

Section 3. The provisions of the new Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 4. The Agency will undertake, as soon as it is furnished with sufficient information to use its best efforts to proceed, subject to agreement among the Agency, the Lessee and as to terms in all agreements to be entered in to with respect to the Project, undertake as soon as particular terms and conditions of a Lease Agreement are determined to enter into a lease only transaction.

Section 5. The Chairman, Administrative Director, Treasurer, Secretary or Assistant Secretary, of the Agency and other appropriate officials or Board Members 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 of the Project.

Section 6. The Lessee is authorized to acquire the premises, and to utilize said premises for a data center and related activities, and install machinery and equipment required in connection therewith; and to advance such funds as may be necessary to accomplish such purposes. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, or Administrative Director or other officer of the agency may deem necessary in order to accomplish the above.

Section 7. The Lessee is authorized 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 estimated amount up to \$100,000.00, which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$8,000.00. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 8. Any such action heretofore taken by the Lessee in acquisition of the Project is hereby ratified, confirmed and approved.

Section 9. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee, whether or not the transaction is consummated. By acceptance hereof, the Lessee agrees to pay such expenses 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.

Section 10. This resolution is subject to Agency approval of payment in lieu of taxes agreement for municipal services. Should the Lessee or any of its subtenants vacate the premises prior to the expiration of the arrangement for payment in lieu of taxes, the Lessee shall use its best efforts to obtain new subtenants, so that no application will be necessary for reduction in assessed value, it being the intent of the Agency that payments in lieu of taxes will be maintained at the level called for by its standard policy at all times while it holds a lease to the Project. The PILOT shall be for a period of 15 years with payments in lieu of taxes in accordance with an initial payment of 20% of the amount of Taxes the first two years and 30% in years three and four; 40% in years five through nine; and 50% in years 10 through 15.

Section 11. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 8 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 Agency shall enter into a lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 12. This resolution is also subject to (a) the acquisition of space suitable for the purpose authorized herein (b) approval by the Agency of any Sublease including any information that the Agency deems necessary to verify compliance with the New York State Industrial Development Agency Act and (c) provision in any Sublease 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 13. The execution and delivery of a Lease or a Lease and Leaseback between the Agency and the Lessee, being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Administrative Director or any member of the Board of Directors or the Agency attorney is 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 14. 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 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 15. The mortgage financing to be issued, if any, shall not be exempt from Federal Income Taxation. Therefore, this resolution is not subject to compliance with the provisions of Section 103 of the Internal Revenue Code of 1954 as amended (the "Code") or to an appropriate allocation under the State law pursuant to the Deficit Reduction Act of 1984.

Section 16. 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 mortgage will be sufficient to pay the cost of the acquisition, 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 property 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 indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 17. This resolution is subject to compliance with all local building and zoning requirements.

Section 18. This resolution shall take effect immediately.

Adopted April 27, 2018

7.0 ADJOURNMENT:

On a motion by Mrs. Reed seconded by Mr. Connor, the Board voted to adjourn at 8:25AM.

Respectfully submitted,
Harold Anderson - Secretary