

**TOWN OF CLARENCE, ERIE COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY**

**MINUTES  
July 18, 2019**

Clayt Ertel, Vice Chairman called the meeting to order at 8:15 a.m.

Present at the meeting were Peter DiBiase, Robert Dixon, Patrick Johnson, Elaine Wolfe, and Clayt Ertel. Chris Kempton and Mary Powell were absent. Also, present were Paul Leone, Jennifer Strong, Steven Bengart, Peter DiCostanzo, Kimberly Ignatowski and Cynthia Rosel.

**Minutes of June 20, 2019.**

There was a motion to accept the meeting minutes of the June 20, 2019 meeting by Patrick Johnson with a second by Elaine Wolfe. There was nothing on the question.

**VOTE:**       Ayes:   DiBiase, Dixon, Johnson, Wolfe, Ertel   Noes: None  
              Recuse: None   Absent: Powell, Kempton.       Motion Carried

**Treasurer's Report**

The Treasurer, Patrick Johnson, gave the financial report through July 18, 2019 reporting on the balances in the checking and money market accounts. Since the last meeting, there were no new revenues received. The total revenue received to date is \$32,223.89. Interest earned to date is in the amount of \$8,202.91. Expenses for this period is in the amount of \$1,571.00. Total expenses to date is in the amount of \$30,014.05. The Net Income to date is \$10,412. Mr. Ertel asked if there were any questions on the Treasurers' Report. There was a motion by Elaine Wolfe with a second by Peter DiBiase to accept the Treasurers Report. There was nothing on the question.

**VOTE:**       Ayes:   DiBiase, Dixon, Johnson, Wolfe, Ertel   Noes: None  
              Recuse: None   Absent: Powell, Kempton.       Motion Carried

**Correspondence.**

Ms. Rosel reported that there were two Public Hearing Notices e-mailed to the members that came from the Town of Amherst and the Town of Lancaster.

**Old Business**

**Reconvene the Public Hearing on the 9074 Main Street Project.**

The Chairman reconvened the public hearing of June 20, 2019. The public hearing was kept open as the project was before the Town Planning Board in the SEQR Process. Mr. Leone reminded the Board that applicant is requesting financial assistance of the Agency in the form of a lease only or lease with mortgage transaction in an amount not to exceed \$2,025,000. The assistance will include mortgage tax abatement, sales tax exemption and real property tax

abatement in accordance with existing Agency Uniform Tax Exemption Policy and Guidelines, as amended. It will be a 7 year PILOT. An IMPLAN study was done. The applicant addressed the Board regarding the project at the Public Hearing. Mr. Leon added that Mr. Cortese, the applicant is present if anyone has any other questions regarding the project.

The Town Planning Board approved the project and the SEQR process was completed and received a Neg Dec.

Mr. Cortese added that he appreciated the Board considering the project and they are excited about getting started and moving to Clarence.

Jennifer Strong, Bond Counsel has prepared the Resolution authorizing the assistance to the project and passed copies out to the Board Members.

The Board is ready to go forward to consider incentivizing this project. Mr. Ertel asked if the Board had anything further. There being no further comments or discussion, there was a motion by Patrick Johnson with a second by Elaine Wolfe to adopt the Resolution as prepared by Ms. Strong authorizing Agency assistance to the 9074 Main Street, Giovinazzo Group 1951 LLC Project. There was nothing further on the question.

**VOTE:** Ayes: DiBiase, Dixon, Johnson, Wolfe, Ertel Noes: None  
Recuse: None Absent: Powell, Kempton. Motion Carried

(Resolution attached hereto as Attachment "A")

Mr. Ertel thanked Mr. Cortese for attending the meeting. Mr. Leone added that he will be contacting Mr. Cortese regarding the paperwork that needs to be sent to the State regarding the project. Mr. Coreste thanked the Board members for their consideration and for approving the incentives. They are excited and eager to start the construction and move to Clarence.

### **New Business.**

Mr. Leone reported that he met with a gentlemen regarding a brewery on Transit Road in the old Frontier Glass Building. It would be an eligible project as it would be manufacturing. He working with the dentistry project that would manufacture crowns. There are no applications on either of these projects as of yet. He will keep the Board advised.

### **Items not on the Agenda.**

Mr. Ertel gave a report on the July 10, 2019 IDA Leadership Council Meeting. The Board members received a copy of the meeting agenda along with a final draft of the UTEP. Mr. Ertel went over the agenda items that were included in the final draft. Discussion followed.

Ms. Rosel also wanted to let the Board know that the Auditor from the State Comptroller's Office will be here the rest of this month and into August.

**Public Comments.**

None.

There being nothing further, there was a motion to adjourn the meeting. A motion was made to adjourn by Elaine Wolfe with a second by Peter DiBiase. There was nothing on the question.

**VOTE:**       Ayes:   DiBiase, Dixon, Johnson, Wolfe, Ertel   Noes: None  
              Recuse: None   Absent: Powell, Kempton.       Motion Carried

The meeting was adjourned at 9:10 a.m.

Respectfully submitted.

Cynthia M. Rosel

**EXHIBIT "A"**

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING GIOVINAZZO GROUP 1951, LLC (THE "LESSEE") ASSISTANCE IN CONNECTION WITH THE CONSTRUCTION OF AN APPROXIMATELY 6,500 SQUARE FOOT CORPORATE OFFICE AND SHOWROOM BUILDING AND A 6,000 SQUARE FOOT WAREHOUSE BUILDING ON A 2.08 ACRE PARCEL OF LAND LOCATED AT 9074 MAIN STREET, IN THE TOWN OF CLARENCE, NEW YORK TO EXPAND CORTESE CONSTRUCTION SERVICES CORP. (THE "SUBLESSEE") WHICH IS CURRENTLY OUT OF SPACE AND THE ACQUISITION AND INSTALLATION OF MACHINERY, EQUIPMENT, FURNISHINGS AND FIXTURES REQUIRED IN CONNECTION THEREWITH, ALL FOR A MANUFACTURING/DISTRIBUTION FACILITY (THE "PROJECT"). THE PROJECT WILL ALLOW THE SUBLESSEE TO EXPAND ITS CURRENT BUSINESS AND MAINTAIN THEIR LEVEL OF SALES AND EMPLOYMENT, AND MAKING THE PROJECT AFFORDABLE WITH A COMPETITIVE LEASE RATE. THE PROJECT WILL BE SUBLEASED TO THE LESSEE FOR SUB-SUBLEASE TO THE SUBLESSEE WHICH WILL BE THE SOLE OCCUPANT OF THE PROJECT AND TO TAKE OTHER PRELIMINARY ACTION.

WHEREAS, Giovinazzo Group 1951, LLC (the "Lessee") has entered into negotiations with the officials of the Town of Clarence, Erie County, Industrial Development Agency (the "Agency") with respect to the acquisition and equipping by the Agency with the proceeds of a lease with mortgage for assistance in connection with the construction of an approximately 6,500 square foot corporate office and showroom building and a 6,000 square foot warehouse building on a 2.08 acre parcel of land located at 9074 Main Street, in the Town of Clarence, New York to expand Cortese Construction Services Corp. (the "Sublessee") which is currently out of space and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith, all for a manufacturing/distribution facility (the "Project"). The project will allow the sublessee to expand its current business and maintain their level of sales and employment and making the project affordable with a competitive lease rate. The project will be subleased to the lessee for sub-sublease to the sublessee which will be the sole occupant of the project

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: that the Lessee desires Agency assistance in the construction and installation of the Project for lease by the Lessee to the Agency located at 9074 Main Street, in the Town of Clarence and is necessary for the Lessee to maintain its competitive position in its industry; the Lessee currently has 35 FT employees and within two years after the Project completion forecasts that they will add 10 FTE positions at the Project location; the Project will provide substantial capital investment; Agency financing or other assistance is reasonably necessary to encourage the Lessee which would likely not proceed with the Project without that assistance; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee to proceed with the Project in the Town of Clarence; and

WHEREAS, the Agency has given proper notice to the Village of Depew and to the Town of Cheektowaga regarding the relocation of the Project and no responses were received; the Applicant has fully answered all questions regarding relocation in the Application; and the Applicant has demonstrated that it has made sufficient unsuccessful attempts to stay in its current location; and

WHEREAS, the Agency finds that the Project is reasonably necessary to preserve the competitive position of the Applicant in its respective industry; 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 construction of the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Town of Clarence; and

WHEREAS, the Project should not be delayed by the requirement of determining the details of a lease with mortgage transaction, which cannot be immediately accomplished, and the Lessee has agreed to extend its own funds with respect to the Project, subject to reimbursement from the proceeds of the notes, if applicable;

NOW, THEREFORE, THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the construction 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 Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the Lessee to construct the Project in the Town of Clarence; (b) that the Project is located at 9074 Main Street in the Town of Clarence; (c) that Agency financing or other assistance for the Project is reasonably necessary to encourage the Lessee to proceed with the Project and that without Agency financing or other assistance they would likely not proceed with the Project in the Town of Clarence (d) the development of the vacant parcel of land; (e) the Project will maintain 35 FT and create 10 FT jobs at the Project location in the Town of Clarence. 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 with mortgage; and (h) the Project is an integral part of the Lessee's plans to expand its business and employment in the Town of Clarence.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized at a cost estimated at \$2,025,000, which Project will be financed through a lease with mortgage transaction with the Lessee.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information undertake to enter into a lease with mortgage.

Section 4. 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 construction and equipping of the Project.

Section 5. The Lessee is authorized to construct an approximately 6,500 square foot corporate office and showroom building and a 6,000 square foot warehouse building on a 2.08 acre parcel of land located at 9074 Main Street, in the Town of Clarence, New York to expand Cortese Construction Services Corp. and to initiate the acquisition and installation of machinery, equipment furnishings and fixtures required by the Lessee in connection therewith, as agent for the Agency, and the Lessee is authorized to advance such funds as may be necessary to accomplish such purposes, subject to reimbursement for all qualifying expenditures from the proceeds of notes. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, Vice Chairman, Secretary, Assistant Secretary or other authorized officer may deem necessary in order to accomplish the above.

Section 6. 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 a combined amount up to \$647,796 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 \$87,500. 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 7. Any such action heretofore taken by the Lessee in initiating the construction and equipping of the Project is 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 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 9. The Agency is offering the standard seven year payment in lieu of taxes on the value added by the Project. Should the Lessee 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 tenants, 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 in this special pilot at all times while it holds a leasehold interest in the Project.

Section 10. 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 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 Agency shall enter into a lease with mortgage transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. This resolution is also subject to the construction of space suitable for the purpose authorized herein.

Section 12. The execution and delivery of a Project and Agent Agreement, a Lease to Agency and Leaseback Agreement, between the Agency and the Lessee each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman or Vice Chairman 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 13. The execution and delivery of a mortgage from the Agency and the Lessee to a lender selected by the Lessee and approved by the Chairman, Vice Chairman, Secretary or Assistant Secretary, in an amount not to exceed \$2,025,000 and together other ancillary documents is hereby authorized which mortgage and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Secretary or Assistant Secretary. 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 constitutes a Type II action under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, and the contemplated actions will not have a significant effect on the environment.

Section 15. 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 the 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 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 agrees to indemnify and hold the Agency harmless from any such loss, damage or expense.

Section 16. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from 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, void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

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

Section 18. 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, 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 19. The provisions of the Town of Clarence, Erie County, Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance adopted by the Agency on June 16, 2016 shall be applicable to this Project.

Section 20. This resolution shall take effect immediately.

ADOPTED: July 18, 2019

ACCEPTED:

GIOVANAZZO GROUP 1951, LLC

By: \_\_\_\_\_

CORTESE CONSTRUCTION SERVICES, CORP.

By: \_\_\_\_\_