

RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on May 16, 2017, at 8:30 o'clock a.m. 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: William Ryan, Steven Thompson, Kenneth Kinsey, Catherine Richardson, Esq.

EXCUSED: Donald Schoenwald

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Honora Spillane, Judith DeLaney, Susan Katzoff, Esq., Debra Ramsey-Burns; Others: Sarah Stevens, Paul Curtain, Brian Sinsabaugh, Lauryn LaBorde, Aggie Lane, Peter King, Larry Lutz, Alexander Marion; Media: Rick Moriarty

RESOLUTION APPROVING THE AGENCY'S PARTICIPATION IN THE MODIFICATION OF LOAN DOCUMENTS AT THE REQUEST OF THE COMPANY IN CONNECTION WITH THE PROJECT FACILITY

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 (the "**Enabling Act**"), together with Section 926 of the General Municipal Law, as amended (said Section and the Enabling Act, collectively referred to as, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research, 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, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to grant financial assistance in connection with one or more "projects" (as defined in the Act); and

WHEREAS, by resolution adopted on April 25, 2013 (the "**Inducement Resolution**"), the Agency approved the undertaking of a project (the "**Project**") at the request of Butternut St. LLC (the "**Company**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 1.4 acres of improved real property located at the corner of North Townsend

Street and Butternut Street (specifically, 400-02 Butternut St. & Townsend S., 404-06 Butternut St., 410 Butternut St., 412 Butternut St., 414 Butternut St., 708 Townsend St. N., 712 Townsend St. N., 714 Townsend St. N., 716 Townsend St. N., 811 N. McBride St. and 813 N. McBride St.) in the City of Syracuse, New York (the “**Land**”); (ii) the renovation of ten (10) existing buildings totaling approximately 18,400 square feet and the construction of three (3) new buildings totaling approximately 50,000 square feet, all for mixed-use, specifically, retail/pharmacy, food and drink, approximately 24 apartments and approximately 2-4 rental townhouses and related parking, all located on the Land (collectively, the “**Facilities**”); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the “**Equipment**”, and together with the Land and the Facilities, the “**Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax and State and local sales and use taxation (collectively, the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction, renovation and equipping 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, in conjunction with the undertaking of the Project, the Company and the Agency entered into a mortgage dated December 12, 2013 in favor First Niagara Bank in the principal amount of \$5,300,000 to secure the Company’s obligations under a corresponding note in the like amount (the “**Loan**”); and

WHEREAS, the Company and the Bank (as defined below) have agreed to modify the Loan by amending the amortization period for the monthly payments due under the promissory note from twenty (20) to twenty-five (25) years (the “**Modification**”); and

WHEREAS, the Company has requested that the Agency participate in the Modification by executing a mortgage modification agreement or similar agreement as well as any other certificates, documents or affidavits required in connection therewith and in accordance with the correspondence submitted herewith by the Company (collectively, the “**Modification Documents**”) in favor of KeyBank National Association, as successor by merger to First Niagara, N.A. (the “**Bank**”); and

WHEREAS, the mortgage modification 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 approval, execution and delivery of the Modification and the Modification Documents will not result in a change to the Project as originally considered and therefore no further SEQRA action is required; and

(b) The Agency's participation in the Modification is hereby approved; and

(c) The Agency has the authority to, and hereby does, approve the execution and delivery of the Modification Documents. The Chairman and/or Vice Chairman of the Agency, acting individually, are each hereby authorized and directed, for and in the name and on behalf of the Agency, to execute and deliver the Modification Documents identified in, or required to carry out the intent of, this Resolution upon the advice of counsel, and to execute and deliver any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to herein and to do and cause to be done any such other acts and things, as they determine, on advice of counsel to the Agency, may be necessary or desirable to consummate the transactions contemplated by this Resolution. The execution thereof by the Chairman or Vice Chairman constitutes conclusive evidence of such approval.

(2) The following are conditions precedent to the Agency's participation in the Modification and execution and delivery of the Modification Documents: (A) the Company will provide the Agency and its counsel with: (i) copies of all Modification Documents for review, consent and approval; (ii) submit to the Agency the appropriate fee, including the Agency's legal fees associated with execution and delivery of the Modification Documents, in exchange for the Agency's participation therein; and (iii) provide the Agency with any and all outstanding reporting documents and annual fees requested in connection with the provided Financial Assistance; and (B) the Chairman and/or Vice Chairman shall approve, upon advice of counsel, all Modification Documents as set forth herein.

(3) Should the Agency's participation in the Modification and/or the execution and delivery of the Modification Documents be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under the Act to participate in the Modification and/or the Modification Documents, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

(4) 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.

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

(6) This Resolution shall take effect immediately. A copy of this Resolution, together with the 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>
William Ryan	X	
M. Catherine Richardson	X	
Steven Thompson	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 May 16, 2017, with the original thereof on file in my office, and that the same (including 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 June, 2017.

City of Syracuse Industrial Development Agency



Steven P. Thompson, Secretary

(S E A L)