

RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on September 17, 2013 at 8:30 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, John Gamage, M. Catherine Richardson, Esq., Donald Schoenwald, Esq, Pamela Hunter

The following persons were **ALSO PRESENT:** **Staff Present:** Ben Walsh, Thomas Babilon, Esq., Susan Katzoff, Esq., Judith DeLaney, Debra Ramsey-Burns, Greg Streeter; **Others Present:** Joseph Gehm, Luke Esposito, Chris Geiger, James Breuer, Matthew Kerwin, Esq., Aggie Lane, Louise Poindexter, Mark McNamara, Esq., Andrew Maxwell; **Media:** Rick Moriarty

The following resolution was offered by M. Catherine Richardson and seconded by Pamela Hunter:

RESOLUTION APPROVING THE AGENCY'S PARTICIPATION IN THE REFINANCING OF A LOAN AT THE REQUEST OF THE COMPANY IN CONNECTION WITH THE COMPANY'S COSTS ASSOCIATED WITH THE PROJECT FACILITY AND AUTHORIZING THE EXECUTION OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH

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, civic 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, 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 August 6, 2002, the Agency undertook a project (the "**Project**") at the request of 455 North Franklin, LLC, a New York limited liability company (the "**Company**") consisting of: (i) the acquisition of a controlling interest in certain real property and the improvements thereon located at 455 North Franklin Street in the City of Syracuse, Onondaga County, New York (the "**Land**"); (ii) the renovation and equipping of the existing building and improvements thereon (the "**Existing Facility**") and (iii) the construction and equipping of one or more additions of approximately 10,000 square foot (the "**Addition**") and with the Land and the Existing Facility, collectively the "**Project Facility**") intended for use with the Existing Facility as commercial office space; and

WHEREAS, the Agency previously conducted an environmental review of the Project under 6 NYCRR Part 617 ("**SEQRA**") and determined that the Project constituted an "Unlisted Action" which would not have a significant impact on the environment under SEQRA; and

WHEREAS, in conjunction with the undertaking of the Project, the Company and the Agency entered into a mortgage in favor of M&T Real Estate, Inc. ("**MTRE**") in the principal amount of Six Million and 00/100 (\$6,000,000.00) to secure the Company's obligations under a corresponding note in a like amount (the "**Loan**"); and

WHEREAS, the Company has requested that the Agency participate in the refinancing of the Loan by executing a new mortgage in favor of Manufacturers and Traders Trust Company ("**M&T**"), in an amount not to exceed Six Million and No/100 (\$6,000,000) to secure the financing of the Project (the "**Mortgage**") and granting a corresponding exemption from mortgage recording tax (collectively, the "**New Financial Assistance**"); and

WHEREAS, the Agency Lease dated as of December 1, 2002, executed by the Company and the Agency in connection with the Project, anticipated the Agency's participation in additional financings.

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 execution and delivery of Mortgage and the New Financial Assistance will not result in a change to the Project as originally considered such that an amendment of the SEQRA finding is required, and as such, the SEQRA finding is hereby ratified and affirmed and no further SEQRA action is required.

(b) The Agency has the authority to, and hereby does, approve the execution and delivery of the Mortgage and the New Financial Assistance. 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 documents and agreements 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. As a condition precedent to the Agency's participation in the refinance and the grant of the New Financial Assistance, as set forth herein, the Company will submit to the Agency the appropriate fee, including the Agency's legal fees associated with the refinancing, in exchange for the Agency's grant of the New Financial Assistance.

3. Should the Agency's participation in the Mortgage or the granting of the New Financial Assistance 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 Mortgage or to grant the New Financial Assistance, 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	
John Gamage	X	
Donald Schoenwald	X	
Pamela Hunter	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 September 17, 2013, 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 15th day of October, 2013.

**CITY OF SYRACUSE INDUSTRIAL
DEVELOPMENT AGENCY**

By:


John Gamage, Secretary

(S E A L)