

APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on December 18, 2018 at 8:30 o'clock a.m., local time, 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 roll being called, the following members of the Agency were:

PRESENT: Michael Frame, Kenneth Kinsey, Ricky T. Brown, Kathleen Murphy

EXCUSED: Steven Thompson

THE FOLLOWING PERSONS WERE ALSO PRESENT: Staff Present: Honora Spillane, Susan Katzoff, Esq., Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Debbie Ramsey-Burns; Others Present: Stephanie Pasquale, Timothy Lynn, Esq., Aggie Lane, Rich Puchulski, Sheila Sicilia, Jessica Maxwell, Jonathan Grahman, Ryland Heagerty, Ryan Benz, Philip Maguire, Suzanne Slack, Kenneth Smith, Ariel Halstead, Kevin McAuliffe, Esq., Rebecca Fuentes, M. Kelly; Media: Rick Moriarty

The following resolution was offered by Kathleen Murphy and seconded by Rickey T. Brown:

RESOLUTION APPROVING AN EXTENSION OF THE TERM OF THE LEASES BETWEEN THE AGENCY AND THE COMPANY AND THE SALES TAX APPOINTMENT OF BVSHSSF SYRACUSE, LLC AS AGENT OF THE AGENCY UNTIL JUNE 1, 2019; AND AUTHORIZING THE EXECUTION OF ANY AND ALL NECESSARY DOCUMENTS

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, together with Chapter 641 of the Laws of 1979 of the State of New York, as amended from time to time (collectively, the "**Act**"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research and recreation facilities, for the purpose of promoting 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

WHEREAS, at the request of BVSHSSF Syracuse, LLC (the "**Company**"), by resolution dated January 24, 2017 (the "**Inducement Resolution**") the Agency agreed to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of a leasehold interest in approximately 93,200 square feet of improved real property located at 945 East Genesee Street

(to be known as 919 E. Genesee Street), in the City of Syracuse, New York (the "**Land**"); (ii) the removal of the existing structures and the construction of a complex totaling approximately 421,482 square feet consisting of new four and five story buildings for use as a mixed-use student housing including: (i) approximately 600 beds across 244 apartment style units; (ii) approximately 5,770 square feet of retail and retail support space; (iii) approximately 9,000 square feet of ground floor amenities; (iv) approximately 2,000 square feet of bike storage facility; (v) an approximately 2,000 square foot fitness facility; and (vi) approximately 274 parking spaces 9 all located on the Land (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures and equipment (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from State and local sales and use tax and mortgage recording tax (except as limited by Section 874 of the General Municipal Law) (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, equipping and completion 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 or about May 2017, the Company and Agency entered into a lease transaction to effectuate the undertaking of the Project and the conference of the approved Financial Assistance (the "**Lease Transaction**"). As part of the Lease Transaction, the Company was appointed as the agent of the Agency through September 30, 2018 for purposes of undertaking and completing the Project Facility and was awarded an amount not to exceed \$1,360,000 (the "**Original Exemption**") in exemptions from State and local sales and use tax (the "**Appointment**"); and

WHEREAS, on February 8, 2018, the Company advised that the costs associated with the Project increased based upon final construction numbers and as a result requested, and was awarded, an increase of \$359,919.36 to the Original Exemption (the "**Additional Exemption**") such that the total award of State and local sales and use tax exemptions would total \$1,719,919.36 for the Project (collectively, the "**Exemption**"); and

WHEREAS, as of December 10, 2018 the Company had realized \$1,514,329 in State and local sales and use tax exemptions leaving a balance in the amount of \$205,590 of unused exemption remaining available for the Project (the "**Remaining Exemption**"). The Company is not requesting any additional financial assistance; and

WHEREAS, by letter dated December 10, 2018, the Company advised that due to the construction at a neighboring property, the roadway improvements (trench repair, milling and overlay etc..) to S. Crouse, Irving and Fayette were delayed to accommodate the work within the right-of-way of the neighbors mixed use project. These delays were coordinated with the City's engineer and the City's Department of Public Works the are requesting the Agency approve a

retroactive extension or reappointment of their Appointment from September 30, 2018 to June 1, 2019 to provide them an opportunity to complete the Project (the "**Extension**"); and

WHEREAS, in connection with the Extension, certain of the Lease Documents (as defined herein) may need to be amended to extend their term coterminous with the Extension (the "**Amendments**"); and

WHEREAS, the Company has confirmed that no additional financial assistance is being requested and that they have not exceeded the amount of the Exemption; and

WHEREAS, the Extension and the Amendments are 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, including but not limited to there being no event of default under the Lease Documents, the Agency hereby makes the following findings and determinations:

(a) The granting of the Extension and Amendments do not require reconsideration or further review by the Agency under SEQRA.

(b) The Agency authorizes the Extension and the Amendments for purposes of completing the Project through and including **June 1, 2019**, conditioned upon the Company: (i) representing and warranting that there are no events of default under any of the documents executed and delivered by the Company in conjunction with the Lease Transaction (the "**Lease Documents**"); (ii) confirming that all insurance executed and delivered in conjunction with the Project and the Lease Transaction remains in full force and effect and will submit to the Agency proof of insurance naming the Agency as an additional insured pursuant to the Agency's requirements under the Lease Documents; (iii) submitting to the Agency any applicable information requested by the Agency with respect to the Extension and the Amendments so that they can accurately track and report as required under the Act; (iv) submitting any applicable administrative fees and all legal fees incurred by the Agency in exchange for the Agency's grant of the Extension and the Amendments; (v) submitting any proof required by the Agency demonstrating that the Company has not realized State and local sales and use tax exemptions in excess of what was authorized for the Project; and (vi) the Company assuming the risk for any State or local sales and use taxes due, if any, during the gap in appointment between the original expiration and the Extension.

(2) The Agency is authorized to execute all documents necessary to effectuate the Extension and the Amendments (collectively, the “**Extension Documents**”) including but not limited to revisions or amendments of the Lease Documents, issuance of a new Sales Tax Appointment Letter and an amendment or extension of the appropriate “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (Form ST-60) for each of the entities; and each the Chairman, the Vice Chairman and/or the Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the documents upon the advice of counsel to the Agency. The execution thereof by the Chairman, the Vice Chairman and/or the Executive Director constitutes conclusive evidence of such approval. Notwithstanding anything herein to the contrary, the Agency makes no representation or warranty as to the effectiveness of the Extension of the Company as its agent for purposes of the Exemption.

(3) The Company shall execute and deliver any and all documents required by the Agency in connection with the Extension and the Amendments and to carry out the intent of this Resolution; and

(4) The Company shall provide or cause its Additional Agents to provide, and the Agency shall maintain, records of the amount of State and local sales and use tax exemption benefits provided to the Project and the Company shall, and cause each Additional Agent, to make such records available to the Agency and the State Commissioner of Taxation and Finance (the “**Commissioner**”) upon request. The Agency shall, within thirty (30) days of providing any State sales and use tax exemption benefits, report to the Commissioner the amount of such benefits for the Project, identifying the Project, along with any such other information and specificity as the Commissioner may prescribe. As a condition precedent to the Company or Project’s receipt of, or benefit from, any State or local sales and use tax exemptions, the Company must acknowledge and agree to make, or cause its Additional Agents to make, all records and information regarding State and local sales and use tax exemption benefits realized by the Project available to the Agency or its designee upon request.

(5) 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.

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

(7) A copy of this Resolution, together with any 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>
Michael Frame	X	
Kenneth Kinsey	X	
Ricky T. Brown	X	
Kathleen Murphy	X	

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF ONONDAGA)

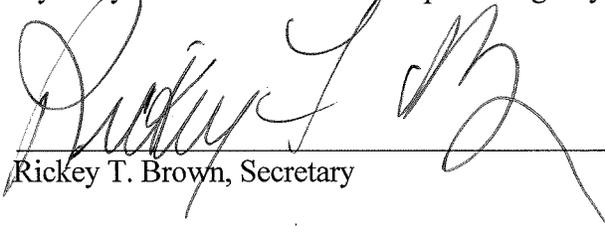
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on December 18, 2018, with the original thereof 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 19 day of December, 2018.

City of Syracuse Industrial Development Agency



Rickey T. Brown, Secretary

(S E A L)