

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on February 19, 2019 at 8:00 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:** Michael Frame, Kathleen Murphy, Kenneth Kinsey

**EXCUSED:** Steven Thompson

**ABSENT:** Rickey T. Brown

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Susan Katzoff, Esq., Meghan Ryan, Esq., Judith DeLaney, John Vavonese, Debra Ramsey-Burns; Others Present: Aggie Lane, Mitch Latimer, Gail Montplaisir, Donna Harris

The following resolution was offered by Kathleen Murphy and seconded by Kenneth Kinsey:

**RESOLUTION APPROVING THE AGENCY'S PARTICIPATION IN A MORTGAGE, A CONSOLIDATION AGREEMENT, A RELEASE AND THE GRANTING OF ADDITIONAL FINANCIAL ASSISTANCE AT THE REQUEST OF THE COMPANY IN CONNECTION WITH THE PROJECT FACILITY AND AUTHORIZING THE EXECUTION AND DELIVERY 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 October 21, 2008 (the "**Inducement Resolution**"), the Agency approved the undertaking of a project (the "**Project**") at the request of Washington/Walton Real Estate Company, Inc. and Washington/Walton Company, LLC (collectively, the "**Companies**") consisting of: (A)(i) acquisition of a leasehold interest in an approximate 1.20 acre parcel of real property located at 200 Franklin Street South and 341 Washington Street West (the "**Land**"); (ii) the construction of an approximate five story, 121,000 square foot commercial office building with underground parking located on the Land (the "**Facility**"); (iii) the acquisition and installation thereon of furniture, fixtures and equipment (the "**Equipment**", together with the Land and the Facility, the "**Project Facility**"); (B) the granting of certain financial assistance in the form of exemptions from real property tax, mortgage recording tax, sales and use taxation and a grant from the Agency in an amount not to exceed \$2,500,000 (collectively, the "**Financial Assistance**"); and (C) the lease of the Project Facility by the Agency pursuant to a lease agreement(s) and the lease or sale of the Project Facility back to the Companies pursuant to an agreement(s); and

**WHEREAS**, in May 2009, the Company and the Agency closed on the Project and executed the necessary lease transactional documents (the "**Closing**"). As part of the Project approval, based upon the Application, the Company's exemption from mortgage recording tax was approximately \$180,000 (which represented 1% of the anticipated mortgage); and

**WHEREAS**, in conjunction with the undertaking of the Project, the Company and the Agency entered into a Mortgage and Security Agreement dated June 15, 2009 in the amount of \$18,000,000 (the "**Original Mortgage**") in favor of First Niagara Funding, Inc. to secure the Company's obligation under a corresponding note; and

**WHEREAS**, in conjunction with the Closing, the Company executed and delivered a grant agreement (the "**Grant Agreement**") and a mortgage on the Project Facility in favor of the Agency securing a \$2,500,000 grant from the Agency (the "**Grant Mortgage**"). The Grant Agreement provides for the release of the Grant Mortgage provided the Company completed the Project Facility within three years and did not transfer ownership to an unrelated third party within five years of the Closing (the "**Release**"); and

**WHEREAS**, the Company has paid down the principal of the Original Mortgage such that the current outstanding principal balance on the Original mortgage is approximately \$13,531,305.00 and is now seeking to borrow an additional \$3,000,000 (the "**New Money**") secured by the Project Facility and consolidated with the Original Mortgage through KeyBank National Association (the "**New Mortgage**"). The New Mortgage shall be in an amount not to exceed Sixteen Million Five Hundred Thirty-One Thousand Three Hundred Five Dollars (\$16,531,305.00); and

**WHEREAS**, pursuant to a request dated February 7, 2019, the Company has requested the Agency participate in the New Mortgage and provide the associated exemption from mortgage recording tax with respect to the New Money (the "**Additional Financial Assistance**"), execute the necessary documents to effectuate the New Mortgage, the Release as well as any and

all other documents required to effectuate the New Mortgage and the Release (collectively the "*Financing Documents*"); and

**WHEREAS**, the Additional Financial Assistance does not exceed \$100,000 and therefore does not require a public hearing; and

**WHEREAS**, the Agency Lease dated as of May 1, 2009, executed by the Company and the Agency in connection with the Project (the "*Agency Lease*"), anticipated the Agency's participation in such Additional Financing; and

**WHEREAS**, the Additional Financial Assistance, the New Mortgage and the Release 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 request for the Additional Financial Assistance, the New Mortgage and the Release 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 Agency's granting of and participation in the Additional Financial Assistance, the New Mortgage and the Release and the execution and delivery of the Financing Documents will not result in a change to the Project as originally considered and therefore no further SEQRA review or action is required; and

(b) The Agency has the authority to, and hereby does, approve its granting of and participation in the Additional Financial Assistance, the New Mortgage and the Release, the execution and delivery of the Financing Documents and further confirms and approves of the award of the Additional Financial Assistance, as permitted by the Act, with respect to the New Mortgage. The (Vice) Chairman and/or Executive Director 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 Financing Documents, or take any other action 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 as the (Vice) Chairman deems appropriate, 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 (Vice) Chairman or Executive Director constitutes conclusive evidence of such approval.

(2) As a condition precedent to the Agency's participation in Additional Financial Assistance, the New Mortgage and the Release, the providing of the Additional Financial Assistance and the execution and delivery of the Financing Documents, all as set forth herein, the Company will submit to the Agency the appropriate administrative fee, including the

Agency's legal fees associated with the Additional Financial Assistance, the New Mortgage, the Release and the Financing Documents; the Company shall execute and deliver the Financing Documents and shall provide proof of insurance as required under the Agency Lease as well as any additional certificates or documents required by the Agency.

(3) Should the Agency's participation in the Additional Financial Assistance, the New Mortgage, the Release or the Financing Documents or any related 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 Additional Financial Assistance, the New Mortgage, the Release or the Financing 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 and/or the Executive Director 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> |
|-----------------|------------|------------|
| Michael Frame   | X          |            |
| Kathleen Murphy | 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 February 19, 2019, 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.

19 **IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this day of March, 2019.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

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

Rickey T. Brown, Secretary

(SEAL)