

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on January 15, 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, Rickey T. Brown, Steven Thompson, Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** **Staff Present:** Honora Spillane, Meghan Ryan, Esq., Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; **Others Present:** Aggie Lane, Rich Puchalski, Timothy Lynn, Esq., Donna Harris, Theodore Trespaz, Esq., Bob Doucette, Rich DeVito; **Media:** Channel 9, Rick Moriarty

The following resolution was offered by Rickey T. Brown and seconded by Kenneth Kinsey:

**RESOLUTION APPROVING THE AGENCY'S PARTICIPATION IN A MORTGAGE, A CONSOLIDATION AGREEMENT AND ASSOCIATED DOCUMENTS 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 March 9, 2016 (the "**Inducement Resolution**"), the Agency approved the undertaking of a project (the "**Project**") at the request of 900 East Fayette Group, LLC (the "**Company**") consisting of: (A)(i) the acquisition of an interest in approximately .5 acres of real property improved by an existing four story, approximately 18,400 square foot building (the "**Existing Building**") located at 900-16, 918 and 922-24 East Fayette Street and 305-07 Irving Avenue (to be known as 900-916 East Fayette Street), in the City of Syracuse, New York (the "**Land**"); the renovation of the Existing Building for use as a mixed-use complex including approximately 4,600 square feet of retail space on the first floor and approximately 13,800 square feet on floors 2-4 containing 12 oversized one-bedroom market-rate apartments; the construction of a new four story approximately 35,000 square foot building including approximately 8,500 square feet of retail space on the first floor and approximately 26,500 square feet on floors 2-4 containing approximately 30 market-rate apartments (the "**New Building**") and together with the Existing Building, 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 real property tax, State and local sales and use tax and mortgage recording tax (as limited by Section 874 of the General Municipal Law) (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 November 2017, the Company and the Agency closed on the Project and executed the necessary lease transactional documents. As part of the Project approval, based upon the Application, the Company's exemption from mortgage recording tax was approximately \$71,000 (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 Construction Loan and Permanent Loan Mortgage dated as of November 2, 2017 in the amount of \$7,150,888.00 (the "**Initial Mortgage**") in favor of Five Star Bank ("**Five Star**") to secure the Company's obligation under a corresponding note in a like amount (the "**Initial Loan**"); and

**WHEREAS**, at the time of closing on the Initial Mortgage, due to a change in the Act, the Project only received  $\frac{3}{4}$  of 1% of the mortgage tax exemption amount; or \$53,631.66 leaving \$17,368.34 in remaining approved exemption (the "**Unused Exemption**"); and

**WHEREAS**, by letter dated January 7, 2019, the Company has requested that the Agency participate in additional financing on the Project through Five Star (collectively, the "**Additional Financing**") consisting of the: (a) execution and delivery of an additional construction loan mortgage and related documents in favor of Five Star in an amount not to exceed Eight Hundred Forty-Nine Thousand One Hundred Eleven Dollars (\$849,112.00) to secure gap construction financing (collectively, the "**Gap Mortgage**"); (b) execution and delivery of a Construction Loan and Permanent Loan Mortgage Consolidation, Modification and Extension Agreement in favor of Five Star in an amount not to exceed Eight Million Dollars (\$8,000,000.00) pursuant to which the Initial Mortgage and the Gap Mortgage will be

consolidated (the "**Consolidated Mortgage**"); (c) confirmation or re-approval of so much of the Unused Exemption as necessary to cover, as permitted by the Act, the associated mortgage recording tax incurred with respect to the Gap Mortgage; and (d) execution and delivery of all other documents reasonably necessary, upon advice of Agency's counsel, to effectuate the Additional Financing and confirm and grant so much of the Unused Exemption as necessary to cover, as permitted by the Act, the associated mortgage recording tax incurred with respect to the Gap Mortgage (collectively with (a), (b) and (c) above, the "**Financing Documents**"); and

**WHEREAS**, the confirmation or re-approval of the Unused Exemption, as set forth above, does not constitute new Financial Assistance; and even if it was so considered, no public hearing is required as the Unused Exemption does not exceed \$100,000; and

**WHEREAS**, the Agency Lease dated as of November 1, 2017, 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 Financing 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 request for additional financing 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 participation in the Additional Financing 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 participation in the Additional Financing, the execution and delivery of the Financing Documents and further confirms and approves of the award of so much of the Unused Exemption as necessary to cover, as permitted by the Act, the associated mortgage recording tax incurred with respect to the Gap 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 the Additional Financing, the providing of the Unused Exemption 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 Financing, the Unused Exemption 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 Financing 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 Financing Documents or provide the Additional Financing, 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	
Steven Thompson	X	
Kathleen Murphy	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

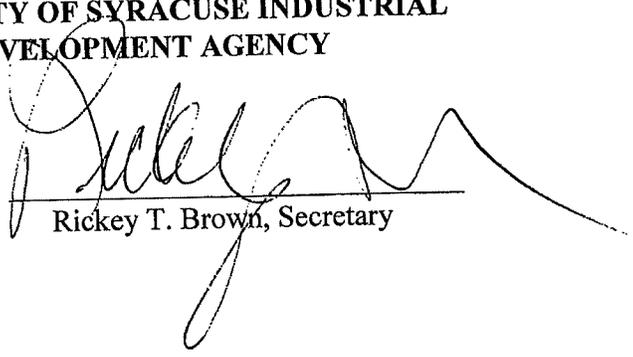
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the "**Agency**") held on January 15, 2019, with the original thereof 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.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency this 15<sup>th</sup> day of January, 2019.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: 

Rickey T. Brown, Secretary

(SEAL)