

## RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on October 17, 2017 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, M. Catherine Richardson, Esq., Steven Thompson, Kenneth Kinsey

**EXCUSED:** Donald Schoenwald, Esq.

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Honora Spillane, Susan Katzoff, Esq., Judith DeLaney, Debra Ramsey-Burns, John Vavonese, Meghan Ryan, Esq.; Others Present: Lauryn LaBourde, Aggie Lane, Lentz, Richard DeVito, Robert Doucette, Robb Bidwell, Jim Mason, Mitch Latimer, Paul Reichel, Donna Harris, Suzanne Slack, Joseph Bryant, Jr, Gail Montplaiser, Emanuel Henderson, Eli Smith, Kelly Besaw, Jeremy Davidneiser, Audrey Farwayir, Walt Dixie, Sharon Owens, Walter Sheperd, Andrew Maxwell, David Delvecchio, Eric Ennis; Media: Rick Moriarty

The following resolution was offered by M. Catherine Richardson and seconded by Steven Thompson:

### **RESOLUTION APPROVING THE AGENCY'S PARTICIPATION IN THE REFINANCING OF THE CURRENT LOAN AND DELIVERY OF A NEW MORTGAGE 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 resolutions adopted on October 12, 2004 and November 15, 2005, the Agency agreed, at the request of Syracuse SOMA Project LLC (the “**Company**”) to undertake a project (the “**Original Project**”) consisting of: (1)(A) the Agency’s acquisition of an interest in six parcels of improved real property located at 200-238 Water Street West in the City of Syracuse, New York (the “**Original Land**”), (B) the renovation of the existing building located thereon and commonly known as the Amos Building and site improvements to the adjacent east and west sites (collectively the “**Original Facility**”), and (C) the acquisition and installation in the Original Facility of furnishings, fixtures and equipment (the “**Original Equipment**” and, together with the Original Land and the Original Facility, the “**Original Project Facility**”) for use as a mixed use facility consisting of street level retail, approximately 19 apartment units and parking; and (2) the lease of the Original Project Facility to the Company; and

**WHEREAS**, by resolution adopted on June 16, 2015 (the “**Inducement Resolution**”), the Agency approved the undertaking of a project (the “**Project**”) at the request of the Company consisting of: (A)(i) the acquisition or continuation of an interest in approximately .577 acres of improved real property located at 204 and 208 West Water Street, in the City of Syracuse, New York (the “**Land**”); (ii) the construction of an approximately 27,310 square foot four (4) story addition to the exiting approximately 25,000 square foot Amos Building consisting of approximately 20,989 square feet on floors two (2) through (4) containing twenty-four (24) handicapped accessible (or conversion ready) one (1) and two (2) bedroom apartment units; and approximately 6,321 square feet of retail space on the first floor, all located on the Land (the “**Facility**”); (iii) the acquisition and installation in the 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 (the “**Financial Assistance**”); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, construction 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**, City of Syracuse Planning Commission acted as lead agency for the purpose of conducting a coordinated environmental review of the Project under Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “**SEQRA**”), and determined that the Project will not result in any significant adverse impacts on the environment and issued negative declarations dated June 8, 2015; and

**WHEREAS**, in conjunction with the undertaking of the Original Project, the Company and the Agency entered into a Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing, as same may have been amended from time to time, in favor of MidFirst Bank (the "**First Mortgage**") in the principal amount of Three Million, One Hundred Thousand and 00/100 Dollars (\$3,100,000) to secure the Company's obligation under a corresponding note in a like amount (the "**Loan**") with respect to the Original Project; and

**WHEREAS**, the Company has completed the Project and has requested that the Agency participate in the permanent financing of the Project as well as the refinancing of the Loan (collectively, the "**Refinance**") with Berkshire Bank by: (i) executing and delivering a Mortgage and an assignment of leases and rents in favor of Berkshire Bank in an amount not to exceed Six Million Four Hundred Thousand (\$6,400,000) to secure the permanent financing of the Project and the Original Project (collectively, the "**Mortgage**"); (ii) providing a mortgage recording tax exemption, if necessary, owed on the Mortgage (the "**Exemption**"); and (iii) executing and delivering all other documents reasonably necessary, upon advice of Agency's counsel, to effectuate the refinance (collectively with the Mortgage and Exemption, the "**Refinance Documents**"); and

**WHEREAS**, the providing of the Exemption does not constitute new Financial Assistance and in fact was previously approved by the Agency; and

**WHEREAS**, the Agency Lease dated as of September 1, 2015, 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 Agency's participation in the Refinance and the execution and delivery of the Refinance 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 has the authority to, and hereby does, approve its participation in the Refinance and the execution and delivery of the Refinance Documents and the granting of the Exemption. 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, the providing of the Exemption and the execution and delivery of the Refinance Documents, as set forth herein, the Company will submit to the Agency the appropriate fee, including the Agency’s legal fees associated with the Exemption, the Refinance and the execution and delivery of the Refinance Documents, in exchange for the Agency’s participation therein and the execution and delivery of the Refinance Documents.

(3) Should the Agency’s participation in the Mortgage or the other Refinance 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 Mortgage or the other Refinance 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 October 17, 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 \_\_\_ day of October, 2017.

**CITY OF SYRACUSE INDUSTRIAL  
DEVELOPMENT AGENCY**

By:   
Steven P. Thompson, Secretary

**(S E A L)**

