

## APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on August 20, 2019 at 8:00 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, Kathleen Murphy, Steven Thompson, Rickey T. Brown, Kenneth Kinsey

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Debra Ramsey-Burns; Others Present: James Trasher, Rich Pascarella, Aggie Lane, Mitch Lattimer, Eric Ennis, Joseph Marua, Peter King, Mark Olsen, Paul Reichel, Esq., Tom Laws, Linda Malik, Gail Montplaisir, NK Smith, Jen Tiff, Scott Gerharz

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

**RESOLUTION APPROVING AN INCREASE IN THE AMOUNT OF STATE AND LOCAL SALES AND USE TAX EXEMPTIONS AWARDED TO THE PROJECT; AND AN EXTENSION OF THE SALES TAX APPOINTMENT OF SAGE TEALL PROPERTIES, LLC AS AGENT OF THE AGENCY UNTIL SEPTEMBER 30, 2020 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, 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 Sage Teall Properties, LLC (the "**Company**"), by resolution dated August 21, 2018 (the "**Inducement Resolution**") the Agency agreed to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 4.5 acres of improved real property located at 220-22 Teall Avenue, in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of an existing approximately 85,000 square

foot building for use in the wholesale and retail sale of foodservice equipment, supplies and design solutions primarily to restaurants and food service operators, including but not limited to the installation of a new roof, lights, windows, HVAC, painting, landscaping and resurfacing of parking lot, all located on the Land (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 (in accordance with 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, reconstruction, renovation, 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 November 2018, 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 and including April 1, 2020 for purposes of undertaking and completing the Project Facility and was awarded an amount not to exceed \$96,000 in exemptions from State and local sales and use tax (the "**Appointment**"); and

**WHEREAS**, the award of sales and use tax exemption was bifurcated between the work being done on the exterior of the Project Facility and the Company controlled interior space and that of the areas then under leases with third parties. The allocation and timing of use were as follows:

<u>Description</u>	<u>Estimated Completion Date</u>	<u>Estimated Costs</u>		<u>Estimated Sales Tax Exemption Needed</u>	
		<u>Construction</u>	<u>FF&amp;E</u>	<u>Construction</u>	<u>FF&amp;E</u>
Exterior work and Company-controlled space	July 1, 2019	\$1,950,000	\$230,000	\$47,000 (by 07/01/19)	\$18,400 (by 07/01/19)
Leased space	April 1, 2020	\$850,000	\$120,000	\$21,000 (by 04/01/20)	\$9,600 (by 04/01/20)

**WHEREAS**, as of December 31, 2018 the Company had realized \$761.00 in State and local sales and use tax exemptions leaving, as of December 31, 2018, a balance in the amount of \$95,239.00 of unused exemption remaining available for the Project (the "**Remaining Exemption**"); and

**WHEREAS**, by letter dated June 14, 2019, the Company requested an increase in the amount of exemption from State and local sales and use tax forming part of the Financial Assistance from \$96,000 to \$220,800 (the "**Increase**"). The Increase request is due to their receipt of significantly higher than expected budgets and estimates from contractors and design

professionals following the purchase of the property, in addition to their need to take an additional 10,000 sq. ft of the space for their own use. In addition, unforeseen mechanical and demo/abatement issues required a significant increase in engineering expertise coupled with under-budgeting on the FFE costs resulted in a substantial increase in the Project costs. Finally, the Company advised that while the scope of the Project has not changed significantly, it originally estimated that 30% of construction costs to be attributable to taxable materials however has since realized the estimate is closer to 40%; and

**WHEREAS**, the following is the updated allocation provided by the Company showing the revised cost and sales tax exemption estimates (including updated completion dates):

<u>Description</u>	<u>Estimated Completion Date</u>	<u>Estimated Costs</u>		<u>Estimated Sales Tax Exemption Needed</u>	
		<u>Construction</u>	<u>FF&amp;E</u>	<u>Construction</u>	<u>FF&amp;E</u>
Exterior work and Company-controlled space	September 1, 2020	\$3,000,000	\$600,000	\$96,000 (by 09/30/20)	\$48,000 (by 09/30/20)
Leased space	September 1, 2020	\$1,400,000	\$400,000	\$44,800 (by 09/30/20)	\$32,000 (by 09/30/20)
Total		<u>\$4,400,000</u>	<u>\$1,000,000</u>	<u>\$140,800</u>	<u>\$80,000</u>

**WHEREAS**, by letter dated June 14, 2019, the Company is requesting the Agency approve an extension of their Appointment from April 1, 2020 through and including September 30, 2020 to provide them an opportunity to complete the Project (the "**Extension**"); and

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

**WHEREAS**, the Project underwent an environmental review by the Agency pursuant to SEQRA, and the requested Extension, Increase and Amendments are not substantial and do not require reconsideration or further review by the Agency under SEQRA; and

**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, the Increase and Amendments do not require reconsideration or further review by the Agency under SEQRA.

(b) The Agency authorizes the Extension, the Increase and the Amendments for purposes of undertaking and completing the Project through and including September 30, 2020, 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, if directed, current 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 Increase and the Amendments; and (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.

(2) The Agency is authorized to execute any and all documents necessary to effectuate the Extension and the Increase 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.

(3) The Company shall execute and deliver any and all documents required by the Agency in connection with the Extension, the Increase 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	
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	

The foregoing Resolution was thereupon declared duly adopted.

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

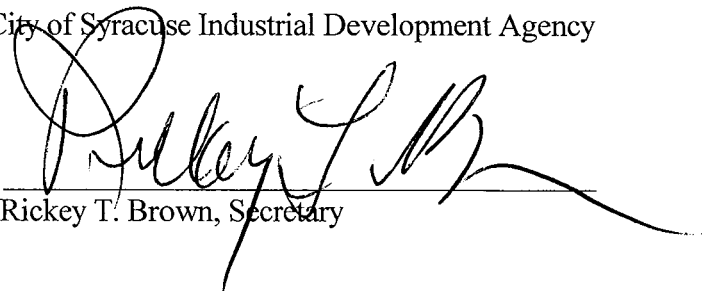
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on August 20, 2019, with the original thereof on 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 10 day of September, 2019.

City of Syracuse Industrial Development Agency



Rickey T. Brown, Secretary

(S E A L)