

## APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on December 20, 2022, at 8:00 o'clock a.m. in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by the Chair and upon the roll being duly called, the following members were:

**PRESENT:** Kathleen Murphy, Steven Thompson, Kenneth Kinsey, Dirk Sonneborn, Rickey T. Brown

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Judith DeLaney, Susan Katzoff, Esq.; Others Present: Kathleen Bennett, Esq., Sarah Stevens, Jim Stevenson, Colin Cleghorn, Geoff Persons

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

### **RESOLUTION APPROVING THE AGENCY'S PARTICIPATION IN OBTAINING A SUPPLEMENTAL CONSTRUCTION LOAN FOR THE PROJECT; 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, 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 1970 W. Fayette, LLC (the "**Company**"), by resolution dated June 15, 2021 (the "**Inducement Resolution**"), the Agency agreed to undertake a project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 1.39 acres of land consisting of five (5) separate parcels located at 1970 West Fayette Street (Tax Map No. 112.-25-04.0), 1499 Erie Boulevard West (Tax Map No. 112.-25-03.0), 1501 Erie Boulevard West (Tax Map No. 112.-25-02.0), 1515 Erie Boulevard West (Tax Map No. 112.-25-01.0) and 1950 West Fayette Street (Tax Map No. 111.-10-04.2) which parcels will be re-subdivided into one parcel (collectively, the "**Land**"); , (ii) the reconstruction and renovation of a three-story

approximately 36,000 sq. ft. building located on the Land ("**Building 1**") for commercial use consisting of: (a) approximately 6,222 sq. ft. to be occupied by a food co-op/grocery with warehousing and distribution, approximately 3,000 sq. ft. of restaurant space, approximately 600 sq. ft. for a hair salon and approximately 4,778 of additional commercial space all located on the first floor; (b) approximately 4,300 sq. ft. of co-working space, approximately 480 sq. ft. of office space, approximately 4,000 sq. ft. for a dental office and brain center and approximately 720 sq. ft. of additional commercial space all located on the second floor; and (c) approximately 9,500 sq. ft. for commercial tenants on the third floor; (iii) the relocation and reskinning of an approximately 2,400 sq. ft. building located on the Land ("**Building 2**" and together with Building 1, the "**Buildings**") to serve as an outdoor seating area for the proposed restaurant; and (iv) upgrades to the Land and Buildings including but not limited to, site design, new sidewalks, streetscape, 51 space parking lot, façade improvements, upgraded lighting, utilities and HVAC, new windows and doors, hardscape improvements for accessibility and truck loading, green space improvements and storm water management system (collectively, the "**Facility**"); (v) the acquisition and installation in and on 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 estate taxes, State and local sales and use tax and mortgage recording tax (in accordance with 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, 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 November 2021, 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**"). In conjunction with Lease Transaction, the Company and the Agency entered into a Building Loan Bifurcated Mortgage and Security Agreement dated as of November 30, 2021 in the amount of \$490,000 (the "**Initial Mortgage**") in favor of Tompkins Trust Company to secure the Company's obligation under a corresponding note in a like amount (the "**Initial Note**"); and

**WHEREAS**, in conjunction with the Initial Note and Initial Mortgage, and as part of the Project approval, the Agency provided the Company with an exemption from the mortgage recording tax otherwise due on the Initial Mortgage; and

**WHEREAS**, by letter dated November 30, 2022, the Company requested the Agency participate in an additional construction mortgage on the Project (the "**Financing**") by executing and delivering: (i) one or more mortgages and an assignment of leases and rents, in an aggregate amount not to exceed \$900,000 (the "**New Mortgage**"), and all related documents in favor of the designated lender, secured by the Project Facility; and (ii) all other documents reasonably necessary, upon advice of Agency's counsel, to effectuate the Financing (collectively, the "**Mortgage Documents**"). As part of the Financial Assistance awarded to the Project, the Company will use the remaining mortgage recording tax exemption allocation towards the New Mortgage; and

**WHEREAS**, the Company is not requesting an increase in the amount of the Financial Assistance; and

**WHEREAS**, the Agency Lease dated as of November 1, 2021, executed by the Company and the Agency in connection with the Project (the "**Agency Lease**"), anticipated the Agency's participation in the Financing; and

**WHEREAS**, the 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 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, the Agency hereby makes the following findings and determinations:

(a) The Agency's participation in the Financing and the execution and delivery of the Mortgage 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 Financing and the execution and delivery of the Mortgage Documents. The Chair, Vice Chair 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 Mortgage Documents 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 Chair, Vice Chair or Executive Director constitutes conclusive evidence of such approval.

(2) As a condition precedent to the Agency's participation in the Financing and the Mortgage Documents, the Company will submit to the Agency the appropriate fee, including the Agency's legal fees associated with the Financing and the execution and delivery of the Mortgage Documents and provide proof of insurance as required under the Agency Lease as well as any additional required certificates, documents or reporting information, in exchange for the Agency's participation therein.

(3) Should the Agency's participation in the Financing and/or the Mortgage 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 and/or the Mortgage 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) Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare, for submission to the (Vice)Chair and/or the Executive Director, all documents necessary to carry out the intent of this Resolution and to finalize the Financing.

(6) 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.

(7) 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>
Kathleen Murphy	X	
Steven Thompson	X	
Kenneth Kinsey	X	
Dirk Sonneborn	X	
Rickey T. Brown	X	

The foregoing Resolution was thereupon declared duly adopted.

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

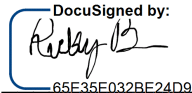
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on December 20, 2022, with the original thereof on file in the office of the Agency, 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 on 1/17/2023  
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**CITY OF SYRACUSE INDUSTRIAL DEVELOPMENT AGENCY**

By:   
65E35E032BE24D9  
Rickey T. Brown, Secretary

(S E A L)