

APPROVING RESOLUTION

As a result of the public health emergency created by COVID-19, the Federal, State and local bans on meetings or gatherings, and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020, as amended from time to time, the City of Syracuse Industrial Development Agency (the "**Agency**") held a meeting on the 21st day of April, 2020, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://bit.ly/syrsida-04082020> (or by accessing the link on the Agency's website) and using meeting number 713 934 932 and password SIDA; or via telephone at (408) 418-9388 with access code: 713 934 932, in conjunction with the matter set forth below.

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

PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): Kathleen Murphy, Steven Thompson, Kenneth Kinsey, Rickey T. Brown and Dirk Sonneborn

THE FOLLOWING PERSONS WERE ALSO PRESENT VIA TELE/VIDEOCONFERENCE (in accordance with the Governor's Executive Order 202.1): Staff Present: Judith DeLaney, Susan Katzoff, Esq., John Vavonese, Lori McRobbie; Others Present: Timothy Lynn, Esq., Chuck Sangster, Kate Maguire, Esq., Jen Tifft; Media Present: Rick Moriarty

The following resolution was offered by Steven Thompson and seconded by Kenneth Kinsey:

RESOLUTION APPROVING THE AGENCY'S PARTICIPATION IN THE REFINANCING OF THE PROJECT AND AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION THEREWITH

WHEREAS, 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 360 Warren Associates, LLC (the "**Company**"), by resolution adopted August 16, 2011 (the "**Inducement Resolution**"), the Agency undertook a

project (the "**Project**") consisting of: (A)(i) the acquisition of an interest in approximately 130,000 square feet of improved real property located at 125 East Jefferson Street, also known as 352-68 South Warren Street and Jefferson Street in the City of Syracuse, New York (the "**Land**"); (ii) the renovation of approximately 98,000 square feet of existing building for use as Class A commercial office space (the "**Facility**"); (iii) the acquisition and installation in or on the Facility of furniture, fixtures and equipment, including but not limited to a new roof and HVAC system (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, mortgage recording tax and sales and use taxation (collectively, the "**Financial Assistance**"); (C) the appointment of the Company or its designee as an agent of the Agency in connection with the acquisition, renovation, improvement 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; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, in December 2012, 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**"); and

WHEREAS, the Company and the Agency previously entered into a mortgage (the "**Prior Mortgage**") in favor of M&T Bank (the "**Bank**") to secure the Company's obligation under a corresponding note in the amount of \$13,400,000 to secure construction financing for the Project (collectively, the "**Initial Note**"); and

WHEREAS, in conjunction with the Initial Note and Prior 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 Prior Mortgage. The Company is not seeking any additional exemption in this regard; and

WHEREAS, as of January 24, 2020, the then current outstanding principal balance on the Initial Note secured by the Prior Mortgage was \$12,328,000; and

WHEREAS, by letter dated April 15, 2020, the Company requested the Agency participate in the refinancing and/or consolidation of the debt (the "**Permanent Financing**") and to increase the credit facility secured by the mortgage by approximately \$4,772,000 for a total consolidated amount of approximately \$17,100,000 (the "**New Mortgage**"); and (ii) executing and delivering all other documents reasonably necessary, upon advice of Agency's counsel, to effectuate the Permanent Financing (collectively with the New Mortgage and the Exemption Affidavit, the "**Permanent Documents**"); and

WHEREAS, the Agency Lease dated as of December 1, 2012, executed by the Company and the Agency in connection with the Project (the "**Agency Lease**"), anticipated the Agency's participation in such Permanent Financing; and

WHEREAS, the Permanent 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 permanent 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 Permanent Financing and the execution and delivery of the Permanent 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 Permanent Financing and the execution and delivery of the Permanent 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 Permanent Documents, 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 the (Vice)Chair determines, 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 conditions precedent to the Agency's participation in the Permanent Financing and the execution and delivery of the Permanent Documents, all as set forth herein: (i) the Company shall be current with all required reporting obligations under the Agency Lease and any other documents executed in conjunction with the Lease Transaction; (ii) there shall be no event of default under the Agency Lease or any other documents executed in conjunction with the Lease Transaction; (iii) the Company shall submit to the Agency the appropriate fee, including the Agency's legal fees associated with the approval of the Permanent Financing and/or the execution and delivery of the Permanent Documents; and (iv) the Company shall provide proof of insurance as required under the Agency Lease as well as any additional required certificates or documents or reporting information, in exchange for the Agency's participation therein and the execution and delivery of the Financing Documents.

(3) Should the Agency's participation in the New Mortgage or the other Permanent 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 New Mortgage or the other Permanent 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 effect the Permanent Financing and the Permanent Documents.

(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	
Rickey T. Brown	X	
Dirk Sonneborn	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 April 21, 2020, 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), as temporarily amended by Executive Order 202.1 issued on March 12, 2020 (“EO 202.1”), such meeting was open to the general public and public notice of the time and how to participate in such meeting was duly given in accordance with such Section 104 and EO 202.1; (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.

5/5/2020 **IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency on _____.

City of Syracuse Industrial Development Agency

DocuSigned by:

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Rickey T. Brown, Secretary

(S E A L)