

## AMENDED INDUCEMENT RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on June 30, 2023, at 8:15 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, Kenneth Kinsey, Steven Thompson, Dirk Sonneborn, Rickey T. Brown

**THE FOLLOWING PERSONS WERE ALSO PRESENT:** Staff Present: Eric Ennis, Susan Katzoff, Esq., Amy Huber; Others Present: Aggie Lane, Wendy Lougnot, Barry Lentz, Jeff Davis, Peter King, Scott Dumas, James Trasher

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

**AMENDED RESOLUTION AUTHORIZING THE UNDERTAKING, ACQUISITION, CONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF A PROJECT; APPOINTING THE COMPANY AS AGENT OF THE AGENCY FOR THE PURPOSE OF THE ACQUISITION, CONSTRUCTION, RENOVATION, EQUIPPING AND COMPLETION OF THE PROJECT; AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BETWEEN THE AGENCY AND THE COMPANY**

**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, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, research 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, and to improve their recreation opportunities, prosperity and standard of living; and

**WHEREAS**, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, lease and sell real property and grant financial assistance in connection with one or more "projects" (as defined in the Act); and

**WHEREAS**, 728 E Genesee St Property Owner, LLC, a Delaware limited liability company, or an entity to be formed (the “**728**”), by application dated May 5, 2022 (the “**Original Application**”), requested the Agency undertake a project (the “**Original Project**”) consisting of: (A)(i) the acquisition of an interest in approximately 0.98 acre of real property improved by a vacant two-story rotunda building (“**Building 1**”) and a one-story bank drive through building (“**Building 2**”), located at 728 East Genesee & Forman Avenue (tax map no. 048.-15-03.0), in the City of Syracuse, New York (collectively, including Building 1 and Building 2, the “**Original Land**”); (ii) the demolition of Building 2; the rehabilitation of Building 1 to accommodate a commercial or retail use; and the construction of a new approximately 134,230 sq. ft., 11-story building to include approximately 129,230 sq. ft. of residential space consisting of approximately 191 market rate units comprised of approximately (45) studio apartments, (50) 1-bedroom apartments and (96) two-bedroom apartments; 3,660 sq.ft. of resident amenity space to include, but not be limited to, on site gym, roof terrace and club room including kitchen facility for residents’ use for entertaining larger guest gatherings and 1,340 sq. ft. of commercial/retail space, as well as 40 surface parking spaces (collectively, the “**Original Facility**”); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures, inventory and equipment (the “**Original Equipment**” and together with the Land and the Facility, the “**Original Project Facility**”); (B) the granting of certain financial assistance in the form of exemptions from real property taxes, State and local sales and use tax and mortgage recording tax (in accordance with Section 874 of the General Municipal Law) (collectively the “**Original Financial Assistance**”); (C) the appointment of the 728 or its designee as an agent of the Agency in connection with the acquisition, construction, construction, 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 728 to the Agency; and the sublease of the Project Facility back to the 728 pursuant to a sublease agreement; and

**WHEREAS**, the Agency previously authorized and held a public hearing with respect to the Original Project; and

**WHEREAS**, pursuant to 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**”), the Agency is required to make a determination whether the “action” (as said quoted term is defined in SEQRA) to be taken by the Agency may have a “significant impact on the environment” (as said quoted term is utilized in SEQRA), and the preliminary agreement of the Agency to undertake the Original Project Facility constitutes such an action; and

**WHEREAS**, by resolution adopted June 21, 2022 (the “**SEQRA Resolution**”), the Agency issued a negative declaration and determined that the Original Project Facility will not have a significant adverse impact on the environment; and

**WHEREAS**, on or about May 12, 2023, 728 submitted an amended application (the “**Amended Application**”) seeking to amend the Original Project due to significant increases in costs, such that the project (the “**Project**”) will now consist of: (A)(i) the acquisition of an

interest in approximately 0.98 acre of real property improved by a vacant two-story rotunda approximately 23,000 sq.ft. building ("**Building 1**") and a one-story bank drive through building ("**Building 2**"), located at 728 East Genesee & Forman Avenue (tax map no. 048.-15-03.0), in the City of Syracuse, New York (collectively, the "**Land**"); (ii) the demolition of Building 2; the rehabilitation of Building 1 to accommodate a commercial or retail use; and the construction of a new approximately 185,700 sq. ft., 12-story building (previously an 134,230 sq. ft., 11-story building) to include approximately 129,230 sq. ft. of residential space consisting of approximately 201 market rate units (previously 191) comprised of approximately (47) studio apartments (previously 45), (49) 1-bedroom apartments (previously 50) and (105) two-bedroom apartments (previously 96) ; 7,000 sq.ft. of resident amenity space (previously 3,660 sq.ft.) to include, but not be limited to, on site gym, roof terrace and club room including kitchen facility for residents' use for entertaining larger guest gatherings and 1,100 sq. ft. of commercial/retail space (previously 1,340 sq. ft.), as well as 37 on-site parking spaces (previously 40) (collectively, the "**Facility**"); (iii) the acquisition and installation in and at the Land and Facility of furniture, fixtures, inventory 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 taxes, 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 728 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 728 to the Agency; and the sublease of the Project Facility back to the 728 pursuant to a sublease agreement; and

**WHEREAS**, pursuant to 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**"), the Agency is required to make a determination with respect to the environmental impact of any "action" (as said quoted term is defined in SEQRA) to be taken by the Agency and the approval of the Project constitutes such an action; and

**WHEREAS**, when the Agency conducted its SEQRA review on the Original Project Facility it found that there would not be a significant adverse impact on the environment; in reviewing the proposed amendments to the Original Project Facility, the Agency has determined that the modifications are not substantial, would not materially alter the Agency's findings from the original SEQRA review, and the Agency has determined it does not need to conduct any further environmental review under SEQRA; and

**WHEREAS**, the changes to the Original Project necessitated a new public hearing and on May 16, 2023 the Agency adopted a resolution describing the amendments to the Project and authorizing a new public hearing with respect thereto (the "**Public Hearing Resolution**"); and

**WHEREAS**, the Agency conducted a public hearing with respect to the changes to the Original Project on June 30, 2023 pursuant to Section 859-a of the Act (the "**Second Public Hearing**"), notices of which were published on June 18, 2023 and June 25, 2023 in the Post-

Standard, a newspaper of general circulation in the City of Syracuse, New York; and given to the chief executive officers of the affected tax jurisdictions by letters dated June 7, 2023 and June 14, 2023; and

**WHEREAS**, prior to the Second Public Hearing, 728 EGSU LLC, a New York limited liability company and the current owner of the Land and Facility (the "**Company**"), advised that 728 had backed out of its commitment with the Company to complete the Project and therefore, the Company respectfully requested the Company be substituted as the applicant for this Project and submitted a verification relative to the all information contained in the Amended Application (the "**Verification**"); and

**WHEREAS**, the Agency has considered the policy, purposes and requirements of the Act in making its determinations with respect to taking official action regarding the amendments reflected in the Project; and

**WHEREAS**, the Agency has given due consideration to the Amended Application and to the Verification and the representations by the Company that the provision of Financial Assistance: (i) will induce the Company to develop the Project Facility in the City of Syracuse (the "**City**"); (ii) will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act; and (iii) the Project will serve the purposes of the Act by advancing job opportunities and the economic welfare of the people of the State and the City and improve their standard of living.

**NOW, THEREFORE**, be it resolved by the members of the City of Syracuse Industrial Development Agency as follows:

**Section 1.** It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration. It is among the purposes of the Agency to promote, develop, encourage and assist in the acquiring, constructing, improving, maintaining, equipping and furnishing of certain facilities, including commercial facilities, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreation opportunities, prosperity and standard of living.

**Section 2.** Based upon the representations and projections made by the Company to the Agency, the Agency hereby and makes the following determinations:

(A) The modifications proposed to the Original Project are not material or substantive changes that would alter the Agency's original SEQRA findings, and the Agency hereby ratifies and confirms the SEQRA Resolution with respect to the Project;

(B) The Project constitutes a "*project*" within the meaning of the Act;

(C) The Agency approves the substitution of the Company as the applicant and determines that the acquisition of a controlling interest in the Project Facility by the Agency and the designation of the Company as the Agency's agent for completion of the Project will be an inducement to the Company to acquire, construct, renovate, equip and complete the Project Facility in the City, and will serve the purposes of the Act by, among other things, advancing job opportunities, the standard of living and economic welfare of the inhabitants of the City;

(D) The Project will not result in the removal of a commercial, industrial or manufacturing plant or facility of the Company or any other proposed occupant of the Project Facility from one area of the State to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project Facility located in the State, except as may be permitted by the Act;

(E) The Financial Assistance approved hereby includes an exemption from State and local sales and use taxes in an amount not to exceed **\$2,600,000** and mortgage recording taxes in the approximate amount of **\$353,234**; and

(F) To appoint the Company as agent of the Agency as further set forth herein.

**Section 4.** As a condition to the appointment of the Company as agent of the Agency, and the conference of any approved Financial Assistance, the Company and the Agency shall first execute and deliver: (i) the Agreement; (ii) a project agreement in substantially the same form used by the Agency in similar transactions (the "***Project Agreement***"); and (iii) the Lease Documents (as defined herein) unless otherwise authorized by the Agency and the Company shall provide proof that all real estate taxes due and owing on the Project Facility are current. The Chair, Vice Chair or Executive Director of the Agency are each hereby authorized, on behalf of the Agency, to execute and deliver the Agreement, the Project Agreement and the Lease Documents (as defined herein), in form and substance similar to other such agreements and documents used by the Agency for similar transactions, with changes in terms and form as shall be consistent with this Resolution and as the Chair or Vice Chair shall approve. The execution thereof by the Chair, Vice Chair and/or Executive Director shall constitute conclusive evidence of such approval. Subject to the due execution and delivery by the Company of the Agreement, the Project Agreement and the Lease Documents, the satisfaction of the conditions of this Resolution, the Agreement, the Project Agreement, the Lease Documents and the payment by the Company of any attendant fees and costs of the Agency, the Company and its designees, are appointed the true and lawful agent of the Agency to proceed with the construction, renovation, restoration, preservation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf. The amount of State and local sales and use tax exemption benefits comprising the Financial Assistance approved herein shall not exceed **\$2,600,000**.

**Section 5.** Subject to the terms of this Resolution and the execution and delivery of, and the conditions set forth in the Agreement and the Project Agreement, and the adoption of a PILOT resolution by the Agency, the Agency will: (i) acquire an interest in the Land and Facility pursuant to a lease agreement (the "***Lease***") to be entered into between the Company and the

Agency; accept an interest in the Equipment pursuant to a bill of sale from the Company (the “**Bill of Sale**”); (ii) sublease the Project Facility to the Company pursuant to a sublease agreement (the “**Sublease**” and with the Lease and the Bill of Sale, and all other documents required by the Agency for similar transactions, including but not limited to, an environmental compliance and indemnification agreement, collectively, the “**Lease Documents**”) to be entered into between the Agency and the Company; (iii) grant the approved Financial Assistance, subject to the approval and execution of the PILOT Agreement; and (iv) provided that no default shall have occurred and be continuing under the Agreement and provided the Company has executed and delivered all documents and certificates required by the Agency in conjunction with the Agency’s undertaking of the Project, execute and deliver all other certificates and documents necessary or appropriate for the grant of the approved Financial Assistance, in form and substance acceptable to the Agency.

**Section 6.** The terms and conditions of subdivision 3 of Section 875 of the Act are herein incorporated by reference and the Company shall agree to such terms as a condition precedent to receiving or benefiting from an exemption from State and local sales and use tax exemptions benefits.

**Section 7.** Subject to the terms of this Resolution, the Agreement and the Project Agreement, the Company may utilize, and is hereby authorized to appoint, a Project operator, contractors, agents, subagents, subcontractors, contractors and subcontractors of such agents and subagents (collectively, “**Additional Agents**”) to proceed with the construction, renovation, restoration, preservation, equipping and completion of the Project, all with the same powers and the same validity as if the Agency were acting in its own behalf, provided the Company execute, deliver and comply with the Agreement. 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 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. for purposes of exemption from New York State (the “**State**”) sales and use taxation as part of the Financial Assistance requested, “sales and use taxation” shall mean sales and compensating use taxes and fees imposed by article twenty-eight or twenty-eight-A of the New York State tax law but excluding such taxes imposed in a city by section eleven hundred seven or eleven hundred eight of such article twenty-eight.

**Section 8.** The Chair, Vice Chair and/or the 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 documents and agreements identified herein and 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 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 Agreement and/or the Project Agreement.

**Section 9.** The obligation of the Agency to consummate any transaction contemplated herein or hereby is subject to and conditioned upon the Company's execution and delivery of the Lease Documents and the documents set forth in Sections 3, 4 and 5 hereof.

**Section 10.** 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.

**Section 11.** Should the Agency's participation in the Project, or the appointments made in accordance herewith, 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 Project, 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.

**Section 12.** Bousquet Holstein PLLC, as counsel to the Agency, is hereby authorized to work with the Company and others to prepare for submission to the Agency, all documents necessary to effect the grant of Financial Assistance and consummate the Lease Documents.

**Section 13.** The Secretary and/or the Executive Director of the Agency are 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.

**Section 14.** 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 )

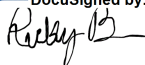
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on June 30, 2023, with the original thereof on file 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 9/27/2023.

City of Syracuse Industrial Development Agency

DocuSigned by:  


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Rickey T. Brown, Secretary

(S E A L)