

## 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 16<sup>th</sup> day of December, 2020, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=m20f7edfe7ed6ecbe3d3c61a08070e524>; (or by accessing the link on the Agency's website) and using meeting number 179 583 3686 and password ZPiVBYRC324; or via telephone at (408) 418-9388 with access code: 179 583 3686, 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: Maarten Jacobs, Nicholas Petraghani, Gail Cawley, Gail Montplaisir, Daniel Schulman, Esq., Suzanne Slack, Donna Harris, Lauryn LaBorde, Doug Sutherland

The following resolution was offered by Dirk Sonneborn and seconded by Kenneth Kinsey:

### **RESOLUTION AUTHORIZING A WAIVER OF CERTAIN PROVISIONS IN THE LEASE TRANSACTIONAL DOCUMENTS**

**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**, Franklin Lofts, LLC (the "**Company**") requested, and by resolution adopted August 28, 2001 the Agency agreed, to undertake a certain project (the "**Project**") consisting of:

(i) the acquisition of a leasehold interest in certain real property and the improvements thereon located at 115 Solar Street in the City of Syracuse, Onondaga County, New York, known as O.M. Edwards Property (the "**Land**"); (ii) the renovation, construction and reconstruction of the building and improvements located thereon (the "**Facility**"); (iii) the acquisition and installation of certain furnishings, fixtures and equipment in the Facility (the "**Equipment**" and together with the Land and the Facility, the "**Project Facility**") (iii) 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 (collectively the "**Financial Assistance**"); (C) the appointment of the Company as an agent of the Agency in connection with the acquisition, renovation, 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 Company to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

**WHEREAS**, in June 30, 2003, the Company and the Agency closed on the Project and executed the necessary lease transactional documents, including but not limited to an Agency Lease Agreement dated as of June 1, 2003 between the Agency and the Company (the "Agency Lease") and a Payment in Lieu of Taxes Agreement dated even date therewith which is set to expire June 30, 2024 (the "**PILOT Agreement**") (collectively, the "**Transactional Documents**"); and

**WHEREAS**, by correspondence dated December 10, 2020, the Company advised it was in the process of refinancing a mortgage on the Project to generate additional cash resources necessary to undertake a strategic, multi-million dollar reinvestment in the property necessary to replace all or a majority of the windows in the Project Facility. As a requirement of the refinance, the lender (Freddie Mac) is requiring the Agency waive the restrictions on transfer/assignment in the Agency Lease and other Transactional Documents to permit an assignment of the Company's interests under the Transactional Documents, and in particular, the Agency Lease and PILOT Agreement (the "**Waiver**"), solely and only: (i) in the event of a foreclosure or deed in lieu of foreclosure (collectively, "**Foreclosure**") specifically by Freddie Mac or its servicer (the "**Lender**"); and (ii) for the first subsequent transfer following the Lender's acquisition by Foreclosure (the "**Subsequent Sale**" and together with the Foreclosure, collectively, the "**Transfers**"), each of those Transfers without the prior consent of the Agency; and

**WHEREAS**, the Company is requesting the Agency authorize a waiver of the assignment restrictions in the Agency Lease, as set forth above, to allow for the Transfers; 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 as to 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). The Agency has classified the granting of the Waiver and the approval of the Transfers as a "Type II" action as that term is defined under SEQRA, and therefore no further review is required.

**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 action authorized pursuant to this Resolution constitutes a Type II action under SEQRA and no further review is required; and
- (b) the Agency authorizes the Waiver of consent to assignment, solely in those specific instances set forth herein and defined as the Transfers, conditioned upon the Lender's agreement to provide notice to the Agency prior to any Foreclosure and the Subsequent Sale and with the Lender's acknowledgment that such Waiver shall be both springing in nature (effective only in the event of the Foreclosure) and then only applicable to the two Transfers.

(2) 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.

(3) 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.

(4) 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><b>AYE</b></u>	<u><b>NAY</b></u>
Kathleen Murphy	X	
Steven Thompson	X	
Rickey T. Brown	X	
Kenneth Kinsey	X	
Dirk Sonneborn	X	

The foregoing Resolution was thereupon declared duly adopted.

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

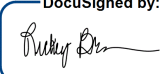
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “*Agency*”) held on December 16, 2020, with the original thereof 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, as amended from time to time (“*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.

**IN WITNESS WHEREOF**, I have set my hand and affixed the seal of the Agency on 1/25/2021.

City of Syracuse Industrial Development Agency

DocuSigned by:  
  
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Rickey T. Brown, Secretary

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