

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 June, 2022, at 8:00 a.m., local time, electronically which was made available via Webex at: <https://syrgov.webex.com/syrgov/j.php?MTID=m075e58e4503a8146ab384f7ae8c71a50> (or by accessing the link on the Agency's website) and using meeting number 2342 655 4699 and password mTRa2D9aCv7; or via telephone at (408) 418-9388 with access code: 2342 655 4699, 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, Rickey T. Brown, Kenneth Kinsey, 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. and Lori McRobbie; **Others Present:** Timothy Lynn, Esq., Christopher Bianchi, Gary Thurston, Brian Sivin, Kevin McAuliffe, Esq., Hannah Ripkey, Milan Tyler, Esq., Greg Loh, Michael Collins, Ross Levine, Andrew Savoy, Philip Maguire, Brian Sivin, Andrew Savoy

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

RESOLUTION APPROVING: (1) AN EXTENSION OF THE APPOINTMENT OF THE COMPANY AND ITS SUB-AGENTS AS AGENTS OF THE AGENCY UNTIL MARCH 31, 2023; (2) THE AGENCY'S PARTICIPATION IN THE REFINANCING OF THE PROJECT; (3) AUTHORIZING AN INCREASE IN THE MORTGAGE RECORDING TAX EXEMPTION; AND (4) 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, 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, to improve their recreation opportunities, prosperity and standard of living, and to prevent unemployment and economic deterioration; 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, by application dated June 13, 2016 as supplemented on March 3, 2020 (collectively, the “*Application*”), Maguire Family Limited Partnership (the “*Company*”) requested the Agency undertake a project (the “*Project*”) consisting of: (A)(i) the acquisition of an interest in approximately 13.312 acres of real property located at 406-10 State Fair Boulevard and 959 Hiawatha Boulevard West (“*959 Hiawatha*”), which is improved by two (2) existing buildings, and approximately 3.825 acres of vacant land located at 1027 Hiawatha Boulevard West, 401 and 403 State Fair Boulevard and 101 and 103 Rusin Avenue and Harbor Street, each located in the City of Syracuse, New York (collectively, the “*Land*”); (ii) the renovation of the existing 7,152 square foot building located on 959 Hiawatha to include an approximately 1,641 sq. ft. addition and renovations to the existing approximately 37,958 sq. ft building located at 959 Hiawatha to include an approximately 9,500 sq. ft. addition, each to house some or all of the following: car dealership and show rooms, service and/or body shop(s) and related office space; and (iii) site improvements, including, but not limited to, landscaping, greenspace, "green" bio-retention and permeable stormwater treatment areas and new vehicle parking areas, all located on the Land ((i)-(iii) collectively, the “*Facility*”); (iv) 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 State and local sales and use tax, mortgage recording tax (except as limited by Section 874 of the General Municipal Law) and real property taxes (on some or all of the Land) (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, 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, or Company’s affiliate, to the Agency; and the sublease of the Project Facility back to the Company pursuant to a sublease agreement; and

WHEREAS, in December 2020, 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 represents that there are no events of default under the leases or any other documents executed and delivered by the Company in conjunction with the Lease Transaction (the "**Lease Documents**"); and

WHEREAS, as part of the Lease Transaction, the Company was appointed as the agent of the Agency through June 30, 2022 (the "**Appointment**") to complete the project; and

WHEREAS, by letter dated June 10, 2022, the Company advised that site development proved far more complicated than anticipated and the Company encountered numerous delays in construction planning and scheduling – not the least of which were related to the COVID pandemic and its effect on local labor and material availability and as such is requesting the Agency approve an extension of their Appointment from June 30, 2022 to March 31, 2023 to provide them an opportunity to complete the Project (the "**Extension**"); and

WHEREAS, the Company has not exhausted their sales and use tax exemption; and

WHEREAS, in 2017 in conjunction with the Project, the Company and the Agency entered into: (i) a Building Loan Mortgage in the amount of \$10,000,000 (the "**Building Loan Mortgage**"); and (ii) a Project Loan Mortgage in the amount of \$3,000,000 (the "**Project Loan Mortgage**") and together with the Building Loan Mortgage, the "**Mortgages**"), each in favor of JPMorgan Chase Bank, N.A. (the "**Bank**") to secure the Company's obligations under corresponding notes (the "**Initial Notes**"); and

WHEREAS, due to the referenced delays in construction, the Company never was able to draw on the Initial Notes secured by the Building Loan Mortgage. As such, the Bank closed that Initial Note; and

WHEREAS, by letter dated June 10, 2022, the Company advised that they are refinancing their outstanding obligations with the Bank and has requested the Agency participate in the consolidation and refinance the Mortgages with the Bank. The structure of the refinancing shall consist of the execution and delivery of an Additional and Restated Building Loan Mortgage and Security Agreement with Consolidation, Reaffirmation, Modification and Extension Agreement with a total mortgage indebtedness of \$16,277,500; (the "**Refinance**"); and

WHEREAS, while the Company never drew any monies on the Initial Note secured by the Building Loan Mortgage, because the Building Loan Mortgage is still of record but the Bank closed the Initial Note, the Company is not able to provide its own mortgage tax exemption affidavit (as known as a "255 Affidavit") for that portion of the initial funding as a 255 Affidavit is only available for amounts that are deemed currently outstanding. Currently outstanding is approximately \$3,000,000 drawn under the Initial Note secured by the Project Loan Mortgage. As part of the refinance and consolidation, the Company is financing approximately \$13,277,000 for construction costs and consolidating that with the outstanding \$3,000,000. As such, the Company is requesting the Agency provide the exemption for the \$13,277,000 in construction costs; and

WHEREAS, in accordance with the terms of the Agency Lease (as defined herein), the Company has requested the Agency: (a) participate in the Refinance in an amount not to exceed \$16,277,500 and to execute and deliver all documents reasonably necessary, upon advice of Agency's counsel, to effectuate the Refinance (collectively the "*Financing Documents*"); and (b) the grant certain additional Financial Assistance in the form of an increase in the mortgage recording tax exemption awarded to the Company to cover the construction financing; namely, an amount not to exceed \$99,900 (the "*Additional Financial Assistance*"); and

WHEREAS, the Lease Documents anticipated the Agency's participation in such additional financings; and

WHEREAS, the Extension, the Additional Financial Assistance and the Refinance are in furtherance of the Project previously approved, which underwent an environmental review by the Agency pursuant to the State Environmental Quality Review Act ("*SEQRA*"), and the present request for additional financing is insubstantial and does not require reconsideration or further review by the Agency under SEQRA; and

WHEREAS, the requested Additional Financial Assistance does not exceed \$100,000 and therefore does not require a new public hearing.

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 Extension, Agency's award of the Additional Financial Assistance and its participation in the Refinance 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 the Extension, its participation in the Refinance, the execution and delivery of the Financing Documents and the award of the Additional Financial Assistance. The (Vice) Chairman 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 Financing Documents, or take any other action 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 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 execution thereof by the (Vice) Chairman or Executive Director constitutes conclusive evidence of such approval.

(2) As a condition precedent to the Agency's participation in the Extension, the Refinance, the providing of the Additional Financial Assistance and the execution and delivery of the Financing Documents, all as set forth herein, the Company will submit to the Agency the appropriate administrative fee, including the Agency's legal fees associated with the Refinance, the Additional Financial Assistance and the Financing Documents; the Company shall execute and deliver the Financing Documents and shall provide proof of insurance as required under the Lease Documents as well as any additional certificates, documents or reporting information required by the Agency.

(3) Should the Agency's granting of the Extension, the Additional Financial Assistance or its participation in the Refinance or the Financing Documents or any related 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 Extension, the Financing Documents, the Refinance or provide the Additional Financial Assistance, 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) 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.

(6) Bousquet Holstein, PLLC is counsel to the Agency and shall assist the Agency in carrying out the actions necessary pursuant hereto.

(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	
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 June 21, 2022, with the original thereof on file in the Agency's 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.

IN WITNESS WHEREOF, I have set my hand and affixed the seal of the Agency on 6/30/2022.

City of Syracuse Industrial Development Agency

DocuSigned by:


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Rickey T. Brown, Secretary

(S E A L)