

APPROVING RESOLUTION

A regular meeting of the City of Syracuse Industrial Development Agency was convened in public session on November 18, 2022 at 8:00 o'clock a.m., local time, in the Common Council Chambers, City Hall, 233 East Washington Street, Syracuse, New York.

The meeting was called to order by Chair and upon roll being called, the following members of the Agency 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., Lori McRobbie; Others Present: David Nutting, Charles C. Wallace, III, Sarah Stevens, Stephen Etoll, Esq., Greg Cleghorn, Colin Cleghorn, Leroy Draper, Jim Stevenson, Christopher Bianchi, Rick Moriarty

The following resolution was offered by Rickey T. Brown and seconded by Steven Thompson:

RESOLUTION APPROVING THE AGENCY'S PARTICIPATION IN THE REFINANCING OF 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, by resolution adopted on June 16, 2015 (the "**Inducement Resolution**"), the Agency approved the undertaking of a project (the "**Project**") at the request of Syracuse Soma Project LLC (the "**Company**") consisting of: (A)(i) the acquisition or continuation of an interest in approximately 25,378 sq. ft. of real property improved by two existing buildings totaling approximately 57,300 sq.ft. (the "**Existing Buildings**"), all located at 214 West Water Street, in the City of Syracuse, New York (the "**Land**"); (ii) the construction of a 9-story, approximately 113,000 sq.ft. addition to the Existing Buildings consisting of: approximately 1,200 sq.ft of commercial/retail space on the first floor facing Fayette Street; an approximately 21,400 sq. ft parking structure including an automated parking lift system to provide 72+/- parking spaces;

approximately 90,400 sq.ft. containing 78+/- one-bedroom units and 26+/- two-bedroom units on floors 2-9; all located on the Land (the "**Facility**"); (iii) the acquisition and installation in and at 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) (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, 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 September 2015, the Company and the Agency closed on the Project and executed documents, including but not limited to, a project agreement, a company lease, an agency lease, a payment in lieu of tax agreement and an environmental compliance and indemnification agreement, each dated as of September 1, 2015 (collectively, the "**Lease Documents**"); and

WHEREAS, in conjunction with the Project, on or about September 29, 2015, the Company and the Agency entered into a Mortgage and Security Agreement, Assignment of Leases and Rents and Fixture Filing, as may have been amended from time to time, in favor of MidFirst Bank in the amount of \$3,000,000.00 (the "**First Mortgage**"); and

WHEREAS, thereafter in or about October 2017, the Company and the Agency entered into a Consolidated Mortgage Loan in favor of Berkshire Bank, which consolidated the First Mortgage in the amount of \$6,400,000.00 (the "**Mortgage**") to secure the Company's obligations under a corresponding note. The Mortgage carried an initial term of five (5) years; and

WHEREAS, by letter dated November 15, 2022, the Company has requested that the Agency participate in the modification of the Mortgage with Berkshire (the "**Modification**") consisting of the: (a) execution and delivery of a Gap Mortgage, Assignment of Leases and Rents and a Mortgage Consolidation, Extension and Modification Agreement and related documents in favor of Berkshire in aggregate principal amount of \$6,000,000 with an extension of the term for an additional five (5) years; and (b) execution and delivery of all other documents reasonably necessary, upon advice of Agency's counsel, to effectuate the Modification (collectively (a) and (b) above, collectively, the "**Financing Documents**"); and

WHEREAS, the Agency Lease dated as of September 1, 2015, executed by the Company and the Agency in connection with the Lease Documents for the Project (the "**Agency Lease**"), anticipated the Agency's participation in such additional financings; and

WHEREAS, the Modification 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 additional 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 Modification and the execution and delivery of the Financing 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 Modification and the execution and delivery of the Financing Documents. The (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 Financing Documents, or take any other action required to carry out the intent of, this Resolution, all 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) Chair 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) Chair or Executive Director constitutes conclusive evidence of such approval.

(c) The approvals provided for herein are contingent upon the Company's payment of all the Agency's fees and costs, including but not limited to attorneys' fees and any delinquencies in payments under the Lease Documents or delinquent fees or costs owed by the Company or any of its principals or related entities to the Agency for fees incurred.

(2) As a condition precedent to the Agency's participation in the Modification 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 Modification and the Financing Documents as well as any other amounts due hereunder; the Company shall execute and deliver the Financing Documents and shall provide proof of insurance as required under the Agency Lease as well as any additional certificates, documents or reporting information required by the Agency.

(3) Should the Agency's approval and/or participation in the Modification 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 Financing Documents or the Modification, 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) Chairman and/or Executive Director for execution and delivery, all documents necessary to effect the Modification and the execution and delivery of the Financing Documents in connection with the Project.

(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)

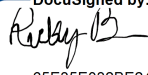
I, the undersigned Secretary of the City of Syracuse Industrial Development Agency, **DO HEREBY CERTIFY** that I have compared the annexed extract of the minutes of the meeting of the City of Syracuse Industrial Development Agency (the “**Agency**”) held on November 18, 2022, with the original thereof on file 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 12/22/2022.

City of Syracuse Industrial Development Agency

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Rickey T. Brown, Secretary

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